



GEORGE W. BUSH ORAL HISTORY PROJECT

FINAL EDITED TRANSCRIPT

INTERVIEW WITH FRED FIELDING

March 8–9, 2011
Charlottesville, Virginia

Participants

University of Virginia

Russell Riley, chair
Barbara Perry

University of Wisconsin – Madison

Charles O. Jones

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Riley: This is the Fred Fielding interview as part of the George W. Bush Oral History Project. Thank you very much for coming to Charlottesville. We've already spoken before the recording was started about the basic ground rules, especially the confidentiality of the proceedings. There is one small housekeeping thing we have to do as an aid to the transcriber, and that is to go around the table and identify ourselves so the transcriber will know, and then Joel is making a written record of the sequence of interventions to aid, too. I'm Russell Riley and the chair of the Oral History Program here.

Fielding: I'm Fred Fielding, the subject.

Perry: I'm Barbara Perry. I'm a senior fellow here at the Miller Center.

Jones: I'm Chuck Jones and I'm a professor emeritus of political science at the University of Wisconsin, which may not be funded ever again. Fortunately I got mine and got out. *[laughter]*

Riley: Over lunch we'll have to hear your take on what's happening.

Fielding: Yes, indeed.

Riley: You've done a previous interview with us as a part of the [Ronald] Reagan project, and I think it's important for anybody who might come to this transcript to know that, because they might want to go back and learn a bit more about your background. In that interview you talked a little bit about your experience with the [Richard] Nixon administration and then went on to talk about your experiences with the Reagan Presidency. But there is a pretty significant gap in years there between your leaving the Reagan administration and coming to the Bush Presidency.

You had experience on the 9/11 Commission that we will want to talk with you about, but I'm wondering if anything during that interval—I'm just looking at the timeline that we put together—is worth our discussing as a way of bridging between the time of the Reagan interview and your experience here. The timeline is behind tab four. I've got you as a member of the President's Commission on Federal Ethics Law Reform in 1989, arbitrator on the Tribunal on the U.S.–UK [United Kingdom] air treaty dispute, aviation disasters, and so forth. Anything come to mind there as maybe illuminating for your experience in D.C. that people would want to come back and have a fuller appreciation of?

Fielding: Well, in '86 I joined the firm of Wiley Rein, which then became Wiley Rein & Fielding, and I practiced with that firm until I went back into government. So what was I doing during that period of time? Basically, we built the firm from about 38 lawyers to 275 lawyers. Though you've captured some of the things that I've done, last night when I was looking at this, I thought about something that had happened. It's during the Bush years. The other thing I did—I was the U.S. designated arbitrator in the treaty dispute between the U.S. and the UK, which was a fascinating thing.

Here were two best friends who finally pulled the trigger and went to arbitration under a treaty. It was fascinating, but it took a long time, as you can see, and that's only the liability phase. When it came to the damages phase we started over and they settled it.

Riley: But as a layperson, what were the core issues?

Fielding: The issues were landing rights, whether the landing rights were equitable, because they were to be equally divided and there was no preference given to British Air versus the others, and in Heathrow it didn't appear that way. When the U.S. carriers would arrive at six in the morning there would be two people at the customs and they would also schedule a 747 from Japan right in front of it, that sort of thing. It really was clear that there were some inequities. But it was a difficult case for them to hear and a difficult case for them to put on. We had the hearings in the Peace Palace. It was quite an interesting event, it really was.

Perry: Was there any talk in the [George H. W.] Bush 41 administration of your joining it?

Fielding: The first Bush? I helped them during the transition, in that I was really Dan [J. Danforth] Quayle's representative, because after the election Quayle was kind of pushed to the side and he didn't want to be and shouldn't have been. So I worked with the Quayle people. During the transition I was really the Quayle representative to make sure that he was advised where to go and what to attend and what turf to grab and that sort of thing. It was easy because I knew the Bush people very well.

Riley: How did you come by this position?

Fielding: The closest I can figure out is that Mrs. [Marilyn] Quayle asked if I would be approached to do this and then somebody did approach me to ask if I would do it. The irony is that I knew the Quayles when he was a Senator, and if I'd go to a reception and he was late, Mrs. Quayle would go through the receiving line with me. She strikingly resembled my own wife, so we had lots of fun about it. *[laughter]* We got to know the Quayles and were very comfortable with them. After he was elected—I wasn't involved in the campaign except to observe it and then observe it after the election—my job was to work with the Quayles and try to make sure he got seated right.

Riley: Did it work?

Fielding: I don't think it ever worked. I think that he really got off on the wrong foot and he never seemed to regain his footing. The most remarkable thing—I had Nixon come down and talk to him, for instance, because he'd been a Vice President.

Riley: Were you party to those conversations?

Fielding: No, I wasn't. One day right after the election we were over in one of those old wonderful houses on the square across from the White House—

Perry: Lafayette Park?

Fielding: Yes, Lafayette Park. One day he had been on television and they asked him a question and his face went blank. So I went and I got the film from his debate when he was a Senator on the jobs bill where he debated Lloyd Bentsen, which was ironic. Bentsen is there with his notes debating and Quayle, not a note, looked like Robert Redford. He was so articulate; he was terrific on the floor of the Senate. I took that clip and then I took the film clip from the news that day where he is just staring straight ahead and not responding properly, half a beat off, and that kind of stuff. I played them, one, then the other, then the other, three times, turned on the lights, and said, "Take your pick. They're both you." It just didn't seem to click.

Perry: What did he say when you showed him?

Fielding: I could see he was a little annoyed, but he had to recognize that he had changed. He wasn't reacting the same way he had before. I must say—he asked me to do a couple of things, run a couple of groups, meetings with Ken Starr and other people to discuss tort reform and that sort of thing. At the end of the first four years I thought he was a lot better, and during the campaign we used to go out to his house every Monday morning and have breakfast with him to discuss what was coming up.

Riley: This was you one-on-one with him?

Fielding: No, there were about four of us, and Marilyn was always there. He was a much better campaigner than George Bush 41 during that campaign for whatever reason. But I would say it wouldn't work.

Riley: Chuck and I, you were in the interview with Quayle in Arizona, weren't you?

Jones: Yes.

Riley: I think as people who had exposure to this person, the interpersonal Quayle was very different from the—

Fielding: Yes, he's vibrant, and he's no dummy at all. He's very smart, politically smart.

Jones: Was it press-shy, you think?

Fielding: I just think he got beat up from Day One in the campaign and—

Jones: That would be perfectly explainable that he came to worry—*What am I going to say that they're going to pick up on?*

Fielding: That's probably part of any politician's reaction. You know every word is going to be parsed. As I say, he got better as he went along, but he already had the A on his forehead. Everybody would say, "Gee, Marilyn is so much more articulate than he is. I guess it's tough to have dinner at night." But I thought he got much better as it went along.

Riley: Was he resentful about the way things had been handled?

Fielding: He was resentful about how people had handled him during the first campaign. He was resentful of that. He started rewriting his speeches. I guess I did work with him a little during the campaign, now that we're talking about it, because I remember a discussion about a speech, but—

Riley: He had Stu [Stuart] Spencer with him at least for a while.

Fielding: He was really angry by the time of the election. Even though they won, he was pretty angry about it. I don't know if that came through in his interviews or not. But he's a nice man. I don't know what to say. He's a good guy.

Riley: But that was the extent of your involvement in the Bush 41?

Fielding: During the transition some of the people who actually had worked for me before were now going in the Justice Department, working very closely with Bush's people, were trying to figure out what to do right out of the box. I suggested to them that they grab hold of the Ethics in Government Act as an issue for the President-elect, and have a commission on federal ethics laws; that was the first thing he did. My reward for that was I had to serve on the commission. So I was involved in that regard.

And as I say, there were times when I would be called upon for ethics and tort reform discussions and things like that, but no substantive role other than what you see here.

Riley: Was there something in the air at the time related to ethics that prompted you to make the suggestion, or was it based on your experience in the Reagan administration?

Fielding: Well, it was the mud that was slung about ethics and lack of ethics, so I thought it was good for him to get right out in front of it. Whatever anyone wanted to say in the campaign about the Reagan administration, this was the new start, so to speak, and it was something I knew he liked.

Riley: I guess another piece of this—I had a very quick look at the Reagan interview—did you stay in touch with President Reagan after he left to go back to California?

Fielding: Yes, we chatted a couple of times. I'd send him something, and he'd send me a funny note back or something. He was fascinated with the prices people would pay for autographs, so every time I'd see some really nutty price I'd send it to him, and of course every time I did I got an autograph. *[laughter]* One time he called me; there had been some question about what we had done and it was very technical. I don't know if I covered this in the Reagan interview or not, but it was really a technical thing, and he called up to ask me what did I remember.

I said, “Well, look, I’m going to be in California in a week. Why don’t I come out, look at the file, and then we can chat about it?” So I did, and I was amazed, because it was a really complex thing. It had something to do with the IRS [Internal Revenue Service]. It wasn’t like Rule 33 or something like that, but it had something to do with the IRS.

I was amazed when I talked to him over the phone how clear he was about the thing. Then when we started to talk about it he was very precise about it as well. So when people would say was he losing it, he certainly wasn’t losing it from my observation, and this was a couple of years after the administration. I have to say, I went out there and I was waiting to see him after I looked through the files. I knew his secretary and we were chatting. I noticed this door open, this attractive woman was coming out, and it was Mrs. [Debbi] Fields of Fields Cookies. So we walked in and of course he had jars of cookies all around his office, “Have a cookie.” We finished up and then we just started chatting, catching up on people and everything. The door opened and the secretary said, “Mr. President, you have to let Fred go home because we have some books to sign before we’re going to go home.”

It really disturbed me. Here’s a guy whose mind was—he’d been the leader of the free world, and they have Mrs. Fields Cookies and, “We have to sign some books before we go home.” I didn’t like the atmosphere.

Jones: Patronizing.

Fielding: It was patronizing, exactly. It wasn’t that he was losing it at all. But that was the last time I saw him except for birthdays and Maggie [Margaret] Thatcher events and things like that, where you walk up and shake hands.

Jones: When was that?

Fielding: Probably two years after. I’d have to go back. I could probably reconstruct it. It wasn’t right after, but it wasn’t that long.

Jones: 1990.

Fielding: Then, as I say, there were always events where—for his birthday the old crew would congregate usually on the west coast and Maggie Thatcher would be there.

Riley: Sure.

Fielding: Did you ever see the films or watch the funeral of Reagan?

Jones: Yes.

Fielding: Boy, I’ll tell you. There were more good eulogies given that day, but Maggie Thatcher’s was just stunning.

Jones: Yes.

Fielding: And she was sitting there. She didn't deliver it, as you recall, she was sitting there. She had pre-recorded it because she was afraid of her health. For a couple of years before that, every time she traveled she packed a black dress in her suitcase in case something happened to him.

Jones: Interesting.

Fielding: Anyway, we're back to Reagan.

Riley: Anything else on Bush or Quayle? Then we get into the [William J.] Clinton years. There's an awful lot of oppositional activity among Republicans in Washington during the Clinton Presidency. Did you have a piece of the action in any of that, either in a consultative role or—?

Fielding: I attended the conventions, but they always gave me some honorific—counsel to the—and it was great. I'd take my daughter, who loves politics. We had the right passes to go wherever we wanted to go and see people and see old friends and stuff. But I really didn't do anything substantive on the [Robert] Dole campaign.

Riley: OK.

Fielding: Actually, I did serve on a commission during the Clinton years. I was appointed by the Secretary of Transportation to an air crash task force for the plane that went down off of Long Island, 102. That was an interesting adventure, but that was the only thing I did.

Riley: What was the ultimate judgment on the cause?

Fielding: They think it was wiring. But this was more on how the airlines treat victims, families of victims. Of course the families were there, very disruptive to getting anything done. They wanted to know what happened. They were cursing at airline executives. It wasn't very productive. We had a discussion subsequently after the formation of the 9/11 Commission. Should we have some of the victims represented on the commission? I related this story. It's one thing to talk to them, but if you get them in the room they each have their agendas. God bless them, they deserve to have agendas, but if you're trying to do fact-finding it doesn't do much good.

Riley: Were you involved in the 2000 election cycle at all?

Fielding: I've never worked on a campaign. That sounds inconsistent to what I've done, but I'm not a campaign person.

Riley: OK.

Fielding: But obviously I was supportive. I went down election night to Austin and we saw him win and then lose in the rain. I had placed some of my young lawyers in the legal apparatus of the campaign. Then, as the election returns and results were not certified for a long period of time, there grew to be a problem; that was, that the time for making appointments and clearances was narrowing tremendously. So instead of being in November, all of a sudden you're in the

beginning of December. Neither camp wanted to show an arrogance, so neither of them set up their transition teams.

I got a call and was asked if I had any thoughts about what they should be doing and I told them what was going to be needed to marshal talent and set up a clearance process and they said, “Well, fine, go do it.” During that period primarily my communications were with Dick Cheney, but obviously the President had to sign off, and the Chief of Staff was a friend of mine too. Now my problem was, there I was mid-December, we had until January 20—[*interruption*]

The problem was we had a really short period of time. Ordinarily you have the luxury of an FBI [Federal Bureau of Investigation] background investigation. People fill out extensive financial disclosures as well. Here, starting out, we didn’t have that luxury. I don’t mean to make it simplistic, but in essence they would interview somebody, and if they decided that that was probably the candidate they wanted to go with—

This was between Clay Johnson and the Vice President and the Vice President’s office, Chief of Staff, and then I’d get the name of the person. The potential candidate would usually come to my office and I would vet them. That would take hours and hours and hours to talk to them because I had no safety net at all if there was something there that I didn’t ferret out. Then when the person left, I would pick up the phone and call yea or nay. It sounds like a pretty simplistic system, but it was all we had. Then we backfilled a lot of the investigations and stuff as fast as we could. We of course had to arrange to negotiate with the Hill so that they would have hearings before Inauguration Day so that on Inauguration Day they could then confirm these people. The President could nominate them. Formalistically they could confirm them that day and the Cabinet would be ready to go.

I called a bunch of lawyers who had worked for me over the years and we put together a team to put together all the stuff and to vet the financial stuff as it came in, because the Hill wanted that. They wouldn’t go forward unless they had both of those. So we had a bunch of OK Corral guys and it worked. [*laughter*] We only had one problem, and that was Linda Chavez [-Thompson]. The irony of that was that Linda and I had known each other for years. She was two offices down from me at the White House. We really knew each other pretty well. She came in; she was up for Secretary of Labor. I spent a lot of time with her, especially because that is such a tough job and there are so many problems with illegal aliens and all that stuff, so you just—she has to be crystal clear and clean.

Jones: Not to mention a Republican.

Fielding: Not to mention a Republican. So she told me the story and we spent that time and then I said, fine, it was OK, and they went with her. Then the story came out that she’d been harboring an illegal who was living in her house. Then the story got even a little cuter that she had been paying this gal to do stuff. So I confronted her. I called her—well, I got a call from Clay Johnson, head of personnel saying, “What in the hell is this all about? Is there anything to it? Didn’t you ask the question?”

I said, “Of course I asked the question.” So I called her up. At first she denied it. She said, “This is such a sad thing. She’s really just a poor person I’ve taken in. Sure, I give her some cash,

but—” Blah, blah, blah. Let me put it this way. If she had told the story the way she told it and if it turned out to be totally true she might have survived this. But she played this game to the point where the FBI started to get really mad about the thing because they kept going further and finding she was lying to them. But I finally said to her, “Linda, there’s too much here. You’ve got to think this thing through.”

First of all, she got a lawyer who was a young lawyer who had worked for me very briefly. She finally ’fessed up to me, so I said, “You’re going to have to ask the President to withdraw your name or have it withdrawn.” Anyway, long story short, I told the people, the Chief of Staff at that time, and then talked to the President-elect about it. So her name was withdrawn. To her credit she gave interviews later and acknowledged that she hadn’t told me the truth.

Riley: Sure.

Fielding: She said she hadn’t told me. The irony was I spent more time that day not talking to the President-e talking the FBI out of indicting her because they were so mad that she had so repeatedly lied to them. *That* we didn’t need, either. I finally said to her, “Why did you do this?”

She said, “The night before, my husband and I decided there were two things I wasn’t going to tell you and we would just take our chances, and that was one.” I said, “And I’ll tell you the other one,” and I told her, because the FBI had picked up the other one. Except for that the system worked. The system will never work if you don’t have the FBI stuff in front of you when you’re doing the vetting.

Jones: Did you participate at all in the choices?

Fielding: No—I shouldn’t say no. If somebody said, “Do you know this person? What do you think of them? What’s their reputation?” I would have said something. But I didn’t say, “Why don’t you pick this one or this one?”

Jones: So once there was a selection—

Fielding: Once there was a tentative selection it would come to me and then I would say yes or no depending on—

Jones: Would it be more than one for a particular position?

Fielding: No, one at a time.

Jones: That at least was taken care of.

Fielding: Elaine Chao was the happiest person in Washington that day, because she had been passed over. She really wanted the job, she campaigned for it. Then, of course, she was the default.

Perry: Why do you think she was passed over to begin with?

Fielding: I recall that she had a reputation that some people didn’t particularly like.

Jones: But the complication of being married to [Addison Mitchell] McConnell wasn't—

Fielding: That helped her, if anything. She had been with the United Fund and there was some scandal there, but that wasn't the thing as I recall; it was her style that some found offensive. Yet she turned out to be a very good Secretary.

Riley: Let me ask you; you said you'd gone to Texas the night of the election, is that right?

Fielding: Yes.

Riley: Was that just to celebrate, or were you going down to work?

Fielding: I was going down to make sure it turned out right. [laughter] No, I just went down to celebrate. As I said, I placed some of my own lawyers in the campaign.

Riley: OK, but you didn't have an extended stay in Texas.

Fielding: No, no.

Riley: So all of what you just told us about your vetting was going on back in Washington.

Fielding: Except when I first was asked to do this thing I did fly to Texas. I interviewed people who were going to go on the White House staff.

Riley: OK.

Fielding: I had to interview Clay Johnson, who was supposedly the personnel director.

Riley: So you're doing the same kind of vetting for them.

Fielding: But I went down to Texas to do the original ones and also to check to see what problems we had with the daughters and that kind of stuff.

Riley: What kinds of problems you had with his daughters?

Fielding: Yes, to make sure there weren't issues that would come up, even though they didn't come up in the campaign.

Riley: Did you find anything there?

Fielding: No.

Riley: You're giving me a nice smile.

Fielding: It's not relevant to what we're talking about.

Riley: Understood.

Perry: Had you met with the President-elect during the campaign?

Fielding: No.

Perry: When was the first time you had met him?

Fielding: Oh, I had met him when he was the Vice President's son, years before that. I said I'd never worked in a campaign, but in the [George H. W.] Bush reelect, Bob Mosbacher was very involved in that, and he called me up and he said, "I need your suggestions for general counsel for the campaign." This was really early on in the reelect campaign. So I gave him a couple of names. One of the names, it was obvious to me, was one of my partners; I think he was campaign counsel in the first Bush election and he was very close. They said, "No, that guy is not going to work." He's my law partner. He had a clash with some of the people in the Bush entourage.

So then Mosbacher said, "How about you do it?" I said, "I'll do it until we find somebody else. I'll start it so we can get it off the ground." So to that extent I guess I did work in a campaign. But I swiftly got somebody to become the campaign counsel. During that period of time I spent a lot of time with W [George W. Bush] because he was really angry. He was mad at the campaign; he was mad at how it was being run.

Jones: Back to the transition. By the time of the Supreme Court decision how far along were you in the major Cabinet positions?

Fielding: Not at all—we didn't start until after the Supreme Court. That was the problem. That's why we were short of time.

Jones: So there wasn't any sub rosa?

Fielding: No. As I said, both camps didn't want there to be one because they were afraid they'd be caught having one and it would look like they would assume they were the winners. I never understood the logic of that because it was bad governance. They should have both been cranking as fast as they could.

Jones: But it's really akin to not wanting to have transition people prior to the election itself. It's superstition.

Fielding: That's right. Reagan tried with Pen [E. Pendleton] James. He tried to set up a shadow personnel office and then it flopped completely. He had to start over from scratch.

Jones: It's a puzzle in a way, because you would think a President actually organizing to be President would be rather impressive.

Riley: Chuck, you're being a political scientist here.

Fielding: I happen to agree with you, but there we go.

Jones: [Thomas E.] Dewey lives again.

Riley: Let me ask—and this is sort of in line with what Chuck had said earlier about trying to predict what people in the future might want to know. You have had deep experience in vetting candidates.

Fielding: Yes.

Riley: I wonder if I could get you to tell us, not in any specific way, but generically, what happens in this vetting. What are the kinds of questions that you—if President [Barack] Obama were to say, “I want to nominate Riley and I want Fielding to vet.”

Fielding: I’d say, “Do you know where I was with the election?” [*laughter*] “You want me to seek Riley? I’ll seek Riley.” No, no, obviously I’m being facetious and it’s certainly not a political vetting at all, except if you pick up something—

I remember one time I was vetting a guy and I kept hearing people say, “Don’t let that SOB [son of a bitch] in the government.” I’m not picking him; I’m just vetting him. But as it turned out I really pressed him and found out that he had made speeches saying that Ronald Reagan was too old to be President and that sunk him. Drew [Andrew Lindsay Jr.] Lewis from Pennsylvania had heard about it. He was furious about it. He said, “Never let that guy—” Pay the dues.

Riley: So if it’s not the political stuff, what is it, generically, what do you—

Fielding: I’ll have to add to this as I think it through. I had certain categories that I went through. I went through your personal history. I would go through your financial shenanigans, your arrangements. For example, if people have limited partnerships I know there’s going to be a problem if they have to divest them. It depends on where they’re going. So it’s personal history—

Riley: Personal history, meaning?

Fielding: Personal history meaning tell me about you. Have you ever been arrested? Have you ever been—

Riley: Do you ask them about their private lives?

Fielding: You bet.

Riley: Sex partners?

Fielding: Yes. Who could attack you? If somebody says the third year I was married I had an affair, I’d ask when was the last time you saw the person? How did you part? Was there any notoriety to it? You have to bore in as much as you can. You’re looking for leads, and the more experience you have the easier it is and the more avuncular you can be while you’re doing it. But by the same token you’re getting—

Perry: The more they tell you.

Riley: Fred, I've been here half an hour and I would tell you anything. Avuncular is exactly the right word. Do you ask them to bring their tax returns?

Fielding: That's handled separately, usually, but I ask them, "Have you paid all your taxes?" There's a whole bunch—I used to have a list, God knows where it is now, to make sure that I—and immigration issues, hired help. I always used to ask a question toward the end or at the end. "I'd like you to think—and you don't have to give me the answer today. I want you to think about this. What in your life, what about your life, would you not want people to know?" It's amazing how many people say, "I can't think of anything" and the next day they think of something. That's what you have to draw out.

There are funny things. Mac [Malcolm] Baldrige. I loved Mac Baldrige. He was such a nice man. You know what his problem was, the thing that bothered him more than anything in the whole world? Here was a captain of industry, cowboy rider, and everything else. He had a ranch down in Texas and his foreman was like a brother to him. His foreman swam the river once a year, back and forth, and he was an illegal. Mac said, "If that comes out, I'll quit this job in a heartbeat."

Another guy talked about the thing that bothered him the most in his whole life was when he was a kid he keyed a car. *[laughter]*

Riley: That's the kind of guy you're looking for.

Fielding: Those kinds of questions. The only political question I'd ask is, "What was your involvement? Was there any scandal that came out of it? Were you linked with Joe?" Because I might know something if he says it. But you just spend hours talking to people.

Perry: Did those questions change over the years in your long service of doing this because of media intrusion?

Fielding: Slightly they did. But what I used to do—and they still do it—in the Nixon White House, Bill Casey, who later was head of CIA [Central Intelligence Agency], was nominated to be the chairman of the SEC [Securities and Exchange Commission]. Casey was a Wall Streeter but he was not the conventional guy. He was the guy who had the tax service books and he was the guy who had some strange partnerships. He had a very complex, nontraditional financial background. John Dean stuck his head in my office one day and said, "Hey, this guy named Casey, look him up. Here's a bio. He's been sued by somebody, so find out what that's all about."

So I pick up the phone and I'm trying to get Casey. I finally get him and he's on a pay phone in a train station. If you know anything about Bill Casey, "Mumble, mumble." Try that on a pay phone in a train station.

Jones: With announcements in the background.

Fielding: This was basically the only way I could talk to this guy to find out about all his lawsuits and all this kind of stuff. Anyway, we finally got him confirmed, but it was a messy thing. So I made up a list of questions, and it had never been done before. After that, every time

that we had a nominee candidate I'd give him that list and ask him to fill it out and come prepared to answer. That list is still used today. It has been modified slightly, but not much, to answer your question. Basically, it's still the same list. When you look back it seems so idiotic that nobody had ever done that before. I'm not saying how clever I am, but it just seemed so silly. There was no record—again, talk about no safety net. Bill Casey could have said there's nothing to that lawsuit.

Riley: If you have a copy of that I wouldn't mind appending it.

Fielding: I could find a copy of that. If not the original, I can find a later version of it. It's funny. Every time [C.] Boyden Gray, I, did it, as a matter of fact I don't know that they used it in the [Jimmy] Carter administration, but I used it in the Reagan administration. Then I found out later that Boyden Gray had this list of questions that had his name on it. It was the same list.

Riley: Is this a plagiarism charge?

Fielding: I went back and saw all the memos that he sent out to the staff, and they were all the same memos that I had sent, he just changed—I said, "You're brilliant, Boyden." That's a windy answer to your question. Anyway, you just have to spend time and you just have to follow the question. Wherever the answer goes, you keep probing until you can satisfy yourself. Most people are honest, because you tell them in the beginning, "If you tell us something and we decide to go forward, we'll back you, but if you don't tell us something, you're on your own." There has to be that understanding.

Riley: Family?

Fielding: Family, sure.

Riley: The question I'm trying to get at is about the extent to which the concerns rise to a certain level and the degree to which an administration is willing to go to bat or fight for somebody based on something that may be in a gray zone. I don't really know how to ask the question other than to say this.

Fielding: You have to make a policy decision. This goes back to Barbara's question too. By way of example, the first time I went to see Cheney after he'd been elected, although I was doing all this, started putting the transition vetting thing in place, I was told that the Vice President wanted to see me. I said, "Good, because I need to see him about something." It was very funny because we both—He walked by, said, "Come on in," so I walked in. He sat down and I sat down and we looked at each other and we both started laughing. We laughed for a couple of minutes and he said, "Do you believe this?"

It was really funny because he and I had been junior staff guys together and now he was the Vice President of the United States. But the purpose of this is, yes, there are changes. Changes in social acceptability. Drugs, for instance. Marijuana was a death knell early on; now it is not. Recreational use of drugs, except for selling, dealing, I should say, but if people have used drugs, even experimented with really bad drugs like cocaine, as long as they didn't do it after they left graduate school.

A killer for a lawyer is to use drugs after he or she has passed the bar because it was illegal. So if somebody is up for a judgeship, and years before they did that, they're disqualified. But marijuana smoking used to be totally disqualified. Generationally not everybody did it years and years ago. I guess not everybody told me the truth years and years ago either. So that would be a change, an evolution.

Riley: But to continue the point that you were making, have you found over time that the incidence of admitted drug use is much higher over time than it was at an earlier age?

Fielding: Oh, yes, yes, because people in college—I don't know if they do it today, but certainly for certain periods when they were in the zone of consideration, they used marijuana in college. When I was in college it wasn't done, or at least I didn't know it was done, thank God. Here, when I was at the University [of Virginia], I don't think that we had drug problems in the law school.

Riley: What about homosexuality?

Fielding: I would never ask a person "Are you gay?" unless there were indicia that he or she was, only because the candidate has to know before they put somebody up. Whether they make the decision based on religious grounds or personal pique, they have to know. They can make the judgment. I wouldn't make the judgment. But if I had a reason to suspect that that might be, I would probe it, you bet.

Riley: Because generationally in an earlier—

Fielding: Yes, generationally it's so different.

Riley: You would have been absolutely disqualified.

Fielding: Yes, so as I say you almost change with the mores in the evolution. Now that you showed me I had this 25-year gap between jobs—

Riley: Sorry.

Fielding: —I realize I've been in this game a long time.

Perry: You mentioned having a good chuckle with the Vice President-elect about his position at that point. Can you tell us about your friendship with him, and did you work with him or the committee to select the Vice Presidential candidate for George W. Bush?

Fielding: No, that was his alone.

Perry: Did he consult with you about it as a friend?

Fielding: No. We'd been friends because we were in the trenches together. We didn't see each other socially. The only time I'd see him was if we were both at the same party type of thing, he and Lynne [Cheney]. So we knew them that way. I saw them a couple of times during the Bush administration, Bush 41, because the Quayles would always invite us to their house. They were

pretty friendly with the Cheneys as well, so we saw a lot of them there. But no, it wasn't like, "Saw you two weeks ago and you weren't, now you are." No.

Jones: What makes a good vetter?

Fielding: Objectivity, judgment.

Jones: Sounds like also a very special style that probes on some very sensitive issues, matters, personal kinds of things, without just totally turning off the respondent.

Fielding: Yes, that's true.

Riley: And the ability to read the person in front of you, I would think.

Fielding: That's the thing. I one time had to do a vetting for John Ashcroft. They really wanted to move on it fast. Ashcroft wanted to do it by phone and I said, "Gee, I really don't want to do this." So they said, "Would you at least talk to him tonight?" It was the evening. So I got on the phone, talked to him for about two hours; it was longer than that, it was probably three hours, but it wasn't the same. The other quirk was he had his wife on the phone.

Riley: Oh, no.

Fielding: At one point I got to the point and I said, "John, I'm going to ask a couple of things I really want to run by you, just you, without your wife on the phone." He said, "Oh, no, we have no secrets." So I laid it right in, *OK big boy*. Gosh, I tell you, I wish I could go off the record here, but I can always take it out. I've got to tell you that during the transition, when Ashcroft was up, we were vetting him, and then we were getting ready to put his stuff together, the rumor came out that John Ashcroft had had an affair with a TWA [Trans World Airlines] flight attendant. If you ever knew John Ashcroft, he's the last guy in the world you would think would have an affair with anybody, but of course you have to run it down.

So we did. I got hooked up with a friend of his who was—oh no, that was funny. There was also a charge that when he was Governor he had taken state gasoline to use in his outboard motor. I ran down his fishing buddy and I'm talking to his fishing buddy. The putative flight attendant denied this, incidentally, I should tell you that. But I run down and get his fishing buddy and I said, "Do you know—" He said, "John did siphon the gas out of the truck, but he paid. Actually, when we left the vehicle he put the money on the front seat, even though we were the ones who were driving the car. He put the money in the front seat to cover the gas because we needed some gas."

And I said, "So you don't think he would cheat?" He said, "John? John would never cheat. Do you know John?" I said, "I'm getting to know him." He said, "He's the straightest guy I've ever seen, and he really sticks by his guns." I said, "What do you mean by that?" He said, "We were out one time and he cut himself and I said, 'John, put a band-aid on that and we'll put some alcohol on it as soon as we get back to the dock.' He stood up in the damn boat and said, 'Alcohol will never enter my body.'" [laughter] I said, "Oh, boy."

Jones: I was going to follow up on the question of what makes a good vetter. In these sessions, interviews, there have to be clues that lead you to probe further. The thing about having a one-on-one, there must be also physical, facial—

Fielding: There's body language, there's facial—you can tell if you're getting close to a nerve. If you are, you can come back to it and see if you get the same reaction. If you do, then you know there's something there.

Jones: Can you give an example without identifying the person?

Fielding: Usually you get the hint when it's some extramarital affair type stuff. Once you do, you've got to get chapter and verse because you have to know, is this notorious? What's the likelihood that this is going to come out again? Was it a repaired relationship or was it a bad relationship? So it's sensitive and yet you can't scare them off, to get back to what you were saying earlier. You have to keep the dialogue going in a nonthreatening way, but you have to let them know that if they don't tell you the truth and it comes out that they haven't told you the truth, then all bets are off.

Jones: Have there been cases where the person simply says, "The hell with this. This is too much"?

Fielding: Usually, "The more I think about it, I think I'd better ask the President to withdraw my name, because I don't want my family to be—" That's usually the way it goes. It happens.

Riley: Are there any cases you can recall where you discovered later that people had not been truthful with you after they'd already gone through the process?

Fielding: Yes. Gosh, what's his name? Deputy Secretary of Defense in the Reagan administration—Paul Thayer. He's a Chuck [Charles E.] Yeager type of guy. I had a call one time from the head of the SEC enforcement branch who said they wanted to come over and see me and walked in. He had another fellow with him and said that he had some strange news for me. They had believed that this guy had been involved in insider trading and it was still going on, that he had a girlfriend and the girlfriend was recent vintage. Her name was Sandy Ryno.

I said, "I just can't believe this." There is this very involved insider trading thing, dealing with people, Billy Bob this and a whole crew of people. I immediately pulled his FBI file, which is what I had worked from, and looked and some of the damn people who were involved in this thing were character references and people who were interviewed by the FBI. I kept thinking, *How did I miss it?* Of course the FBI missed it. They interviewed all the same people but everybody lied and you come to the conclusion that people who are committing that kind of fraud, it's not too hard for them to lie about it.

Riley: Sure.

Fielding: It's an ongoing event. And Sandy Ryno had been wired. They found out that she was involved in this and they wired her. The damndest thing—they'd go on picnics, and "who brought the bread" was a little code. In answer to your question there, I missed it, the FBI missed

it. Obviously this guy had an entire second life in which he rode motorcycles and he had a circle of friends and nobody put it together.

Jones: Required two vetters, one for—

Perry: One for each life.

Fielding: Exactly.

Riley: You don't strike me as being the motorcycle-riding-vetter guy.

Fielding: It was very funny, but I was really upset because I thought, *It can't be; how did I miss it?* So as I say, in answer to your question, that's an example where someone just flat lied and got away with it, not just with me but with the FBI and everybody else. And a very prominent guy in the community. It just destroyed him. He kept claiming he was innocent. They had the wire and he finally confessed when he went to trial. His wife, family left him. It was horrible.

Riley: Anything else on the vetting? This is fascinating. Chuck?

Jones: When was it over as far as your participation in the vetting?

Riley: Under 43.

Fielding: Forty-three's inauguration. By that time [Alberto] Gonzales had taken over the reins of the Counsel's office and so I just dissolved my group and they picked it up.

Riley: Were there discussions about your going in the government at that time?

Fielding: No. I had no desire to go in the government. Gonzales was uninitiated about the office processes, but he got some good people; and we also spent a lot of time together.

Jones: Once you said yes with a nominee, did you do any of the prepping for the hearings?

Fielding: Yes, my team did. That's what we put together. We still had to clean up the files, because don't forget, I didn't have an FBI file. The financial stuff hadn't been done. It was all on the financial stuff, making sure that somebody knew that if they had certain things they might have to divest them, and in certain categories they might have to divest them. Just try to do as much as you could without literally seeing it. Then we had to prepare the stuff for the hearings. Rummy [Donald H. Rumsfeld] had 42 volumes presented to the Senate committee on his financials and stuff.

Jones: Really?

Fielding: Forty-two volumes.

Jones: So once—

Fielding: He was so mad about how much it was costing him. "Take it up with—I didn't appoint you, he did."

Jones: So once there was a yes, the nominee in a sense becomes yours as far as the team is concerned.

Fielding: Yes, that's right.

Jones: You sort of take over at this point.

Fielding: And we also brought in the legislative affairs people at that time.

Jones: All of that was sort of truncated because normally—

Fielding: It was really a rough time. I don't want to sound over dramatizing, but it was tough because the stakes were high. Here's a new President, contested election. And, as it turned out, we got the Cabinet in, but as was illustrated by the findings of the 9/11 Commission, the delays that occurred after that were tragic in really key posts.

Riley: So Inauguration Day, then you're back to practicing law and no interest in going into the government, no approaches about staying in. Your old friend Dick Cheney didn't ask you if there was something you wanted to do?

Fielding: No, but I think he can read faces as well as I can. [*laughter*]

Riley: Very good.

Fielding: I should say in all candor there were times when Gonzales would call me and say, "Why don't you come on over," and we'd chat for a half hour or so, something he was dealing with but that was a free ticket.

Riley: What kind of reading were you getting on him at the time, because he had zero experience in Washington and limited experience actually as an attorney, right?

Jones: Had you known him before?

Fielding: No. I vetted him in Texas. I met him. No, I hadn't known him before and it was a problem. There are a couple of jobs that you shouldn't put people in who don't have any experience, and that's probably one of them. National Security Advisor is another one. Experience helps so much. I shouldn't say you shouldn't put anybody in, but experience really helps.

Riley: Did he have deputies who were experienced?

Fielding: I helped him get a deputy. Tim Flanigan.

Riley: Of course.

Fielding: Who was terrific and had some experience and was wise in the ways and was a very good guy. So Flanigan was—I actually was going to bring Flanigan into my little team, even though he was from a later era, but by the same token then obviously it was more logical that he would go with—and Flanigan didn't want to do it. He was helping him during the transition, Al

Gonzales, but he didn't want to go in. He has about 30 kids—he doesn't literally, but he has 14 or 15 kids or something.

Riley: So the financial sacrifice was too great, or was he just—

Fielding: He went in.

Riley: But you said he didn't want to go in, and my question was whether it was the financial sacrifice or was he worried about working for somebody—

Fielding: Oh no, no, it was the financial question. He loves the government, at least I think he does.

Riley: So you're doing these occasional consultations with Gonzales. Do you hear anything from the Vice President at all during this period of time?

Fielding: No.

Riley: Anything before September 11 where you had an engagement beyond this limited—

Fielding: No. Wait a minute, there's one appointment that's not in here. I'm on my third or fourth cycle of it and I'd have to go back and check. There's something called ICSID, International Centre for Settlement of Investment Disputes, which is basically an international treaty that nations sign on to and it gives a forum for settling investment disputes, especially when a country will nationalize or expropriate another outside investment. I've been appointed to that three or four times, I'm on it right now. You don't get many cases; I don't know why they do this. But it is a Presidential appointment. You have to be selected by other countries! I've had two cases. I don't know if that was during that period of time or not.

Riley: OK.

Fielding: For some reason I think it was because my term was cut short when I went back into government, but I'm not sure.

Riley: I have a question I want to ask you and I might as well put it on the table now, based on your experience across multiple administrations and the profile that you pick up in reading the press materials. That is, were you ever interested in or approached about a judicial appointment?

Fielding: I was interested in it when I first went in the Nixon White House. I'm a trial lawyer by training. When I first went in, of course, I was 31 years old, but I always thought that that would be the ultimate goal of practicing law, to end up being a judge. In my naïve way I thought that judges were older people and that it was kind of the capping of one's career when you got all your knowledge and wisdom and then you shared it. Of course the political reality is if you're 51 you're probably too old for most judicial appointments these days, maybe not 51. But in any event, after being in the Nixon administration, I thought, *Well, that takes care of that; that's never going to happen.*

Then obviously I went back into the Reagan administration, and at that point I was asked if I was interested in the D.C. Circuit, which I would have thought at the time was right, but by that point I was not interested in going onto the bench at all.

Perry: Why was that?

Fielding: I enjoyed practicing law. I'd known enough judges that I had known before they were judges and knew that there was a monastic side of that, plus I'm not sure it's the most entertaining thing to have two captives every year that you proselytize. They're your clerks and they do all this stuff, but your social life compresses a great deal. It just didn't interest me, plus I really enjoyed practicing law.

Riley: OK. You're in Washington on September 11?

Fielding: Yes.

Riley: Do you have a story about your experience?

Fielding: My story is the same as everybody's. I'm sitting there and a young lawyer comes running in my office, said a plane just flew into the World Trade Center. I turned on my television and of course there was the plane. While we were watching it I saw this other plane, which I thought was a news plane or something. I saw it go into the other building and I said to the associate at the time, "That's terrorism." He said, "What do you mean?" I said, "Come on, two planes?" But it was really weird watching the smoke. You could see the smoke coming out of the Pentagon.

Perry: You were in your office downtown?

Fielding: Yes, I was in my office downtown.

Perry: And out the window of your office you could see the Pentagon?

Fielding: No, I couldn't see the Pentagon, but I could see the smoke. The other thing that people always forget, which I thought was one of the most stunning of all things, you saw the two and then they were flashing back and forth. Jim Miklaszewski was at the Pentagon and he was saying, "Yes, here at the Pentagon they're—" And all of a sudden you see him go like this, it was when the plane hit. He was at the other side of the building. I thought that was one of the most remarkable things of all. I've never heard anybody talk about it afterward. It was *boom*.

That was quite a day. I don't know how I got home so easily. We waited around a while and I drove one of my partners. We went across Key Bridge and there you could really see the smoke coming from the Pentagon at that point.

Riley: Your home is in northern Virginia?

Fielding: Yes. Everybody talked about how it jammed up the streets and all, but my recollection is—maybe I waited long enough before I went home—so that was it.

Riley: At any point as the government is consolidating a response are you called on for consultation?

Fielding: No.

Riley: And this is true pretty much for the entire duration of that period, for months?

Fielding: Yes.

Riley: So they're preoccupied and not reaching out to those on the outside.

Perry: Any conversations with the Vice President, even in a social setting?

Fielding: No, I don't think I talked to the Vice President. Well, I saw the Vice President while on the 9/11 Commission because we interviewed him, but other than that, I don't think I talked to him after the transition, after the inaugural. I don't think I talked to him except for that day until after I was appointed as counsel and went back in. But I'm trying to think. Subsequent to that I remember I had a conversation with Gonzales about something and he was kidding me. He said, "I can't believe you did this for almost six years. I'm worn out." It's like one year in. But he talked about having to bone up on the law of war.

Jones: Sorry, who was this?

Riley: Gonzales.

Fielding: Al Gonzales. Then I thought to myself, *Gee, I was worried about the War Powers Resolution, but I never worried about the law of war when I was in before.* So obviously that would occupy a lot of time. But no, I didn't, except for the episodic talking to him about various things. I didn't have any contact until I guess he called me and asked me if I would be interested in going on the 9/11 Commission.

I said, "It's not your appointment." He said, "Yes, but we can influence it." I said, "Who is going to be on it?" He told me. I suggested that with the exception of Jamie Gorelick they were a bunch of old white guys and they really should try to get somebody else on there and suggested a black Congressman, used to be a football player.

Riley: Did he go on?

Fielding: No.

Jones: From Oklahoma?

Fielding: Yes.

Riley: J. C. Watts [Jr.].

Fielding: Yes, J. C. Watts. I got a call back the next day, "We want you to do it. Will you do it?" But that was the first communication having anything to do with 9/11.

Riley: I see. I'm trying to recall a time frame then for the establishment of the commission.

Fielding: It would say right there.

Riley: The Congress and President created the commission, Public Law 107-306 November 27 of 2002.

Fielding: OK. We organized in December.

Riley: Do you remember having reactions as to how the administration was responding to this as somebody who had been on the inside before?

Fielding: Not really, no. I really didn't.

Jones: You're asking specifically about post-9/11?

Riley: The post-9/11 period, whether you felt either they're really doing a good job or I wonder if they're going overboard on this or that or things of that nature.

Fielding: No, not particularly. I was an observer. I may think that through a little, but at this time it doesn't seem to pop in my head that I thought they were either screwing it up or go get 'em.

Riley: Fair enough. Then you accept the—I guess the appointment comes from who?

Fielding: Denny [Dennis] Hastert appointed me. They were all from the Hill. I think the President named the chair. I think that's the way it went.

Riley: OK.

Fielding: I accepted.

Riley: You agreed to go on. Can you tell us about how you go about doing your work once you accepted the appointment?

Fielding: We had an exploratory meeting. The first meeting, when the commission was finally appointed, completed, I think it was in December. It was an organizational meeting, everybody getting to know each other. I knew some of the people who were on there from before.

Perry: Who were they? Who were the ones on the commission you knew?

Fielding: I knew Richard Ben-Veniste; I knew Jamie Gorelick, John [F.] Lehman. I'm trying to think who else was on the commission. I'd met [Thomas] Slade Gorton, I knew Jim Thompson in passing, and I'd worked with Lee Hamilton on some things when he was on the Hill. I didn't know Kean, didn't know Bob Kerrey, didn't know Tim Roemer at all. Slade Gorton and Jim Thompson I knew, but not well. Lehman I knew very well.

It was interesting. For instance it's no secret that Ben-Veniste is an ardent Bush hater. He really was. The first guy who went on there was the Congressman from Georgia who was a quadriplegic—

Riley: Max [Joseph Maxwell] Cleland.

Fielding: Max Cleland. That was horrible to put him on there because he was so bitter about the campaign, in addition to being bitter about his life. He was really very handicapped. History proves what I'm about to say. I'm not telling a tale out of school, but I discovered how he was injured and it had to make him so bitter. He and a couple of guys were sitting on a hillside drinking beer one afternoon. After they had a couple of beers they were throwing the cans and he picked up something to throw it and it went off. That's got to make you bitter. But he should not have been on the commission.

We talked about it. Tom Kean and I talked about it, Lee Hamilton and I talked about it. The President appointed him to the U.S.–Canada Boundary Commission, which was a paying job which he needed and also diverted his attention. Then we got Bob Kerrey, who is terrific.

Riley: When you come into the position, there are discussions at the formative stage about the extent to which this is going to be a member-driven enterprise as opposed to a staff-driven enterprise, or—

Fielding: Well, if you exclude Phil [Philip Zelikow], Phil was a very integral part of this whole thing and controversial in his appointment, candidly.

Riley: Sure.

Fielding: We had two key appointments that there was a lot of controversy over, Phil's position and the general counsel, because Ben-Veniste had been on the original Watergate prosecutor's team and wanted the general counsel to be appointed from their team's names. So, during the Watergate investigation, they kept suggesting different names from the Democrat side. I hate to say the Democrat, Republican side, but it was. It was an even split, five and five. On paper, it was doomed, as it couldn't possibly succeed because as five and five it was deadlocked.

Riley: Sure.

Fielding: They kept suggesting people who were on the Watergate prosecution; that was the kind of approach they were going to take. That would have destroyed the commission, but the first day people were talking about, "We have to be able to subpoena the President. We have to do this, that." So that undercurrent existed for a period of time during the commission. But it was kept well in check by Tom and by Lee Hamilton. They were both very good.

Then the ultimate thing issue was how does it turn out that we get a successful book that works out of this whole thing? After we went through all the shenanigans about who was going to testify and what subpoenas we were going to issue and what are you going to do about executive privilege—and of course I knew a lot about executive privilege so I could outline to them how long and unsuccessful that attack would be by the time our mandate was over. But after that, when we got to writing the report, it was really written by committee for the most part. The staff would write, and they brought in an historian. Philip brought in an historian to help us write, but we decided we wanted to make it read like a novel so that it would grab people and then they'd keep reading it. I think we succeeded.

We went through this page by page, paragraph by paragraph, sentence by sentence. This whole group of people. But we'd get to problems and the way we solved the problems and achieved unanimity was basically we deleted the adjectives. It made all the difference in the world. Every sentence in there has got a footnote to it, but if you delete the adjectives, then it takes the embellishment out of it. That's how we did it.

Riley: Were the hearings useful, the public hearings?

Fielding: I think they were useful because they kept the public's attention focused. They were certainly useful to some of the commissioners, because they got face time on television. But I don't know how useful they really were because most of the people who were testifying had been briefed and debriefed beforehand, kind of knew what they were going to say. There were a couple that were spontaneous. The citizen testimony was helpful because again it captured the attention. But if you had the New York police commissioner and the fire commissioner testify it was silly. Everybody would know that these two groups hate each other. There are more bar fights between the two and here they're all going "kumbaya." You knew that it wasn't real.

There were some funny events too. [Michael] Bloomberg came, and he brought his chief of police and somebody else whom we had asked to interview. Bloomberg was just to welcome us to New York because that was our first hearing, say nice things about us. Instead he basically said to the commission, "OK, we're here, ask us any questions you want," which was not the purpose of him being there. Later he'd say, "We were there. We don't have to come testify again." So that didn't work for him because we said, "We have to reserve the right to call you again."

I have a hard time when the hearings are used for "gotchas." That's not productive. But in a way it kept the activity up. I was a dissenter, I guess, of having anyone talk to the press during the period of time, go on talk shows or talk to the press at all. My theory, announced and believed, was that we were supposed to be sitting and figuring out the causes of this. We weren't supposed to be editorializing about it on television. I felt the only people who should be talking are the chair and the vice chair. So you have the control and we have the command. But some were not to be denied. I was the only one—they had a box score at the *Daily News* one time of all the commissioners and how many times they'd been on television. The winner was in the hundreds and I had a goose egg.

I did go on afterward. We teamed up and went on. Sure, I went on there, because I was selling the book at that point. But earlier that was a bone of contention. Then the other major problem—I'm trying to think of problems and I shouldn't. I should be saying good stuff.

The other major problem was should we get an extension. I said, "You don't want to ask for an extension unless you know you're going to get it because otherwise you're doomed." Well, they didn't have enough time, so it can't be a complete story. Finally people came around to that line of thinking. We probed enough to know if we got the President to come out and endorse it that required us to get an extension because we needed an extension of time. But the controversies were over. "We should all be able to look at the President's daily briefing books." Well, it's never going to happen, guys and girls; it's never going to happen. So let's work out something that *will* happen. And we had leaks from the commissioners. So—

Riley: They were coming from the commissioners rather than from the staff?

Fielding: There were things that the staff didn't know that the commissioners knew that ended up in the press, so yes.

Riley: Explain what you just said, that there were things that the commissioners knew—

Fielding: Things that were discussed within the commission hearings when there was no staff present would end up in the press—be it plans, be it—that kind of stuff.

Jones: Just among the commissioners, not the commissioners meeting with someone who was testifying?

Fielding: No, no. I'm talking about stuff that would come out that literally was discussed in a commission meeting.

Riley: In the commission meeting—I suppose what I'm trying to get a picture of, Fred, that I don't have a good portrait—I read the report years ago. Obviously we talked to Philip about it, but I guess I'm trying, partly I think because down here obviously we've had a connection with Philip, there is a tendency to think about this as a kind of staff-driven enterprise, which I think is probably a false picture. So I'm looking to you as somebody who was on the commission to help flesh out what the commission itself was doing and if it's possible to talk about the division of labor and the relative role of what the membership was doing as opposed to—

Fielding: The staff did a lot of research and a lot of prep for the commissioners. They did a lot of the prep for us and did some of the writing. Not the final writing, but some of the writing. So in that sense it was staff-driven. But really, except for Philip, and Philip was one of the champions, for instance, of the style of the book. He is the one who got us the historian to write for it, but Philip would be the better—maybe I'm looking at it just through my own eyes. To me the staff was terrific in gathering stuff and information for us, but the decision-making right along was the commission's.

Riley: That's what we want to hear from you about because you're the first source on that piece of it that we've talked with. Maybe the best way to do this, and please, you guys jump in at any time, but one area where I assume that you would have had a fairly significant role would have been on this question of executive privilege and access to the President and Vice President. Could you talk about how that presented itself to you, how it was debated within the commission?

Fielding: I'll try to give you a quick answer on that. The issues were apparent in that let's put public pressure on the White House to let us do X, Y, or Z. That's fine. We had long discussions and obviously I had been the keeper of the keys for a number of years, so I knew the subject and I told them, "You're asking for the crown jewels here, but don't get involved in a litigation mode, because you may get an instant gratification from how tough you were, but if the administration digs its heels in, you're not going to get any information. Now, do you want information or do you want a fight?" That was the decision you had to make.

Perry: What did your colleagues say in response?

Fielding: Obviously they went with “Let’s get the information.” But it wasn’t without discussion.

Riley: Do you care to share with us elements of that discussion?

Fielding: There were people who at every turn wanted to zing the administration.

Riley: Is it fair to assume that there were strict party-line positions on this, or not?

Fielding: Some people were just party line—yes, it was party line. It was political; it wasn’t philosophical.

Jones: It sounds as though it was beyond party, in some cases almost personal?

Fielding: I hesitate to say personal. It’s personal to the person who feels that strongly about it, but I don’t think it was—I don’t know. It’s a hard line to discern between personal feelings about a candidate or a President and to philosophically disagree with the President. There was an awful lot of acrimony that came out of the Bush election. To my chagrin and amazement it lasted and lasted and lasted. You asked me before if I had any observations while I was watching the administration. I couldn’t believe—even when I went in in the last two years, you’d just scratch the surface with some people and there was this feeling that this was an illegitimacy to this institutional President. Come on. This is the way we decide things in this country; it is by the ballot box or the courts. You can’t revisit everything you don’t like. But it was really deep, a deep sense of anger and mistrust. “We wuz robbed!” You should get over that in a year or so, but not eight years.

Perry: Could you tell us about your own intellectual development on the issue of executive privilege? Obviously, we know where a lot of that came from, from your service in the Nixon White House and the Watergate era. But did you go into government service and into serving the President with a pretty firm understanding of executive privilege from your study of the law and history and political science as a young man?

Fielding: No, I don’t think so. I was a political science major as well. I knew there were three branches of government. By the time I got out of that I knew certain things, but the nuances of executive privilege were alien to me until I really went into the government in the Nixon era. But do I believe pretty strongly in its viability and its necessity? Yes. I really have come to believe that. It can be abused, like anything, but I really think it’s a necessary element.

Actually, it sounds funny, but you have some of the letters that I wrote back and forth to the Hill. That was an interesting exercise for me. First of all, after about the third one you’re trying to say the same thing differently. But other than that it helped me to focus my own mind, and to focus other people’s minds on the importance of this as an institution. It’s not something that has no limits to it, like anything, but I think it really is necessary.

Perry: Did you think that the court got it right in 1974 in the *U.S. v. Nixon* case in defining executive privilege as they did?

Fielding: They got it right, but it's so narrow a decision. There is no way that you can—if there is a doctrine that has an opening at each end—I don't know how to describe this. There is always an exception. Look, we had the thing with Condi [Condoleezza] Rice and the 9/11 Commission. Should Condi be forced to testify? Condi wanted to testify so badly. I knew that. But they didn't want to break the precedent because she is a very close advisor to the President. Were they hiding something? No. That was the principle.

The rationalization for her testifying—and I drafted the letter that acknowledges that this is an aberration, this is a one-time shot, if you will, because the doctrine is so overridden by other public policy reasons. This is a unique entity. It isn't a breach of executive privilege in the rationalization because it was important that she testify. Not for what she was going to say, but it was important to avoid the consequences of her not testifying, and politically that was a minefield for the Bush administration when she wasn't going to testify. It didn't matter what she said. It was just that she wasn't—they were hiding something.

In one or two of my letters you will even see a reference to the wonderful doctrine that has never been explained to me fully of the secrecy between a Senator and his staff, for instance, where you can't probe that at all. By the same token you're asking to probe the same thing with the President.

Jones: Applying executive privilege to this kind of a unit, organization, temporary, whatever you want to call it, is very special, isn't it?

Fielding: Yes.

Jones: You can put your finger on it; you can call it unique. It's here today, definitely going to be gone tomorrow, even if there is an extension.

Fielding: That's right, and it is sui generis in its composition.

Jones: Correct. So that it's almost demanding a special, yet another interpretation of, a flexible concept of executive privilege.

Fielding: Or to put it another way, it's the basis of a logical rationale for deviating from the—

Jones: Right.

Fielding: The irony of this is this commission was created by Congress, and yet I always thought it really had a foot in each camp. The problem was that they wanted it declared to be a legislative body because they were trying to get some information from Henry Kissinger when he was first appointed. That was the basis for them asking him to disclose certain information, who his clients were and all this kind of stuff.

If you recall, this was the Kissinger Commission for about eight minutes.

Jones: That's right.

Fielding: I think it would have been quite different if it had been the Kissinger Commission.

Riley: Elaborate on this, because I'm not quite sure I've got your point. They wanted—

Fielding: They wanted certain disclosures and they said you have to do this. The press were building it and Congress was saying you have to make these certain disclosures because this is a creature of the Congress. So they walked themselves into that box.

Riley: Got you.

Fielding: They couldn't say it was both. Executive privilege would have been an easier thing to deal with if it had been an executive branch thing.

Riley: But it was created by public law, right?

Fielding: Yes.

Riley: The President signed it.

Fielding: But the administrative departments are set up by public law too.

Perry: Did you feel a tension yourself from when you were in the White House as White House Counsel both going back to the Nixon years, Reagan, and then coming up to the end of the Bush 43 Presidency where you're in the White House and you're trying to protect the President's information and his staff? But in this role you want information.

Fielding: Yes, that's true. Was I very jealous of the executive privilege when I was on this commission? Yes, yes, I was and I was very mindful of it. As I am wont to do, I always remind people: Don't do something that you don't want done to you, because administrations do change. But it wasn't so much that we—we had to have complete access in some way, shape, or form. The real question was how to get the information. We finally rationalized, for instance, a review of the daily briefing bulletins and stuff of the President's, which is really, really the most secretive of all things. We had people go in and look at it and read every page.

One of the things we really wanted to be able to say at the end was that we had access to anything we wanted and we were able to say that at the end with one exception. That was—I'm going to forget this if I don't go into it, so segue me back. At one point when Tom Kean wasn't in town and they, the White House, needed to see Tom and Lee, I would be the surrogate for the chairmen. So we went over to the White House one time. There was the Director of the CIA, head of the Criminal Division, the National Security Advisor, and Al Gonzales—probably that's it. We had asked to be able to interview some of the detainees.

Our people and our staff were really into the weeds on this stuff about the detainees. They said, "If you give us questions, we'll ask the questions for you." Anybody knows if you ever do that it's different, because you have to be able to follow up, you have to be able to keep going.

Riley: Sure, like vetting.

Fielding: Yes, this is like vetting, but the stakes are high—well, the stakes are high in either one. But they denied that. They said, "We can't really do this because a lot of people have asked us to

do this and we have a very strict rule that only the interrogators can interview these people. We'll take your questions if you want, but that's it."

Perry: These were the detainees at Guantanamo Bay?

Fielding: Right.

Perry: Not in the United States.

Fielding: They were not in the United States. But as it turns out, they were probably the high-level, high-valued detainees that had been water boarded and things like that.

Perry: And what did you want to ask them?

Fielding: The staff—I don't mean to diminish the staff, because there again staff had a whole series of questions to ask. The staff knew things that we knew the interrogators didn't know. You can't educate them to everything, but we knew stuff from looking at the classified information that the interrogators didn't know. They wouldn't let us do it. They said, "We just can't do it." That was that meeting.

I thought afterward part of the reason they were antsy about it was probably because these people had been water boarded and they didn't want somebody to ask the off-chance question. I don't know that that is a fact, but I've often thought that that is probably what it was.

Jones: Who is the "they" who would not allow it?

Fielding: It was the United States government, because it was the head of the CIA.

Jones: That group.

Fielding: Yes, it was that group. The whole purpose of that high-level meeting with Tom—me—and Lee was to explain that we couldn't do it. Not that—you had to understand, what they were saying is, "We've given this the highest attention we can give it and we can't grant you your wish."

Perry: But the commission wasn't looking to see or investigate mistreatment.

Fielding: No, not at all.

Perry: You were looking to see what these people knew.

Fielding: What they knew, and if they could give us clues to certain things about the hijackers.

Perry: Filling in gaps.

Fielding: Filling in gaps. That's right.

Perry: Of your story.

Fielding: The hypothesis that I made about that was the reason they didn't want to do it is strictly mine, but I'm sure that's what it was.

Riley: Sure.

Fielding: They also said it interrupts the flow of interrogation if you have a stranger come in, and that is valid. But I segued into that from something. What were we talking about?

Riley: Barbara, do you want to continue on that line? I've got a question, but—

Perry: You go ahead, because we were still on the executive privilege.

Fielding: That's right, we were talking about executive privilege. To answer your question about could I take off my shirt and put on a new shirt for the commission. I never took it off, but I felt that I had an obligation to tell the commission what the stakes were. Politically they would have gotten much more—they being the Democrats, or the people who wanted to stir the pot—would have gotten much more mileage out of Condi never testifying because the story kept going and going and going. But that wasn't the goal. When we decided to drain the swamp, the goal was to find the facts on what had happened.

Riley: So who—you say Condi wanted to testify.

Fielding: Yes.

Riley: Who do you have to convince in the White House that this can be done consistent with an adherence overall to an executive privilege—

Fielding: I don't know. You mean in this instance? The only person I was dealing with was Gonzales, but I don't know who he was counseling with.

Riley: You're not talking with Tim Flanigan anymore once—

Fielding: No, no, this was—they had a funny thing in the White House when Gonzales was there. I didn't know at the time, obviously, but after I got in—there were certain things Gonzales knew and certain programs he was read into that no one else in his office knew or was read into.

Riley: This is post-9/11.

Fielding: Yes, post-9/11. I understand that if you're talking about covert actions, but if you're talking about just policy development, that's a dangerous thing.

Perry: I'm sorry. The term "read into" I'm unfamiliar with.

Fielding: "Read into" is if there are programs that are highly classified, then in order to get the information they brief you, make you understand certain parameters of what you can do, and also put your eyes out if you ever say anything to anybody.

Riley: It's a higher level of classification.

Fielding: It's a very high level. It is even higher than code word because it is code word within code word, some of this stuff. This is for really sensitive operations where a partner agency must let the President know what they're doing and get his blessing. Any disclosure of it would be very dangerous.

Jones: Burn before reading.

Fielding: It is, almost. Or you just say, "I don't want to hear any more."

Riley: Did you have to get any additional security clearances to serve on the commission?

Fielding: Yes, of course we did.

Riley: That's just an aside.

Fielding: You're right, we did. Of course it was easier for me when I went in to the—

Riley: Back in '07.

Fielding: Back in '07, because they'd already done it.

Jones: I've served on a couple of commissions over the years. I have a hard time picturing the commission itself writing. Can you describe that a little bit? You've got drafts.

Fielding: You get a draft and then people go over it and then you go OK. You start going over it and someone would say, "I think we ought to change this. I think we ought to change that," or "This doesn't read well at all." Somebody would say, "Well, how do you think it should read?" It really was on a paragraph-by-paragraph basis. But the first drafts were done by the staff, by the historian.

Perry: Who was the historian?

Jones: I don't know.

Riley: Ernie [Ernest] May.

Jones: Political scientist, I thought.

Riley: He is an historian. Philip's—

Fielding: Either that or he came under false colors. [*laughter*]

Riley: He was, he is an historian, recently passed away, last year.

Perry: We have his library here now?

Riley: I'm not sure. There may be some of it. Anyway, Chuck, you had a question?

Jones: Was it always the full commission?

Fielding: Yes.

Jones: We're talking about a lot of time.

Fielding: Yes, we are. We'd get the drafts and if somebody didn't participate it was usually because they were there but they hadn't read the stuff. So they couldn't really participate.

Jones: So you received them individually and—

Perry: Ahead of your meeting.

Fielding: That's right.

Jones: Go over it and—

Fielding: Most people attended almost all the sessions. It was easier for me, candidly, because I was about five, six blocks down the street, so I could walk back and forth. The mistake I made—not a mistake—but I kept a full practice of law, whereas some people didn't.

Riley: Is that right?

Fielding: Oh, yes. I didn't realize, Jamie Gorelick was only on part-time in her practice too. It sounds funny to say it was written—I don't mean the whole thing was written, but it was gone over, every paragraph—by the commissioners.

Jones: I understand. I've heard it often said, I think I've even done it in book reviews, saying "This book reads like it was written by a committee."

Fielding: Right.

Jones: But that's not the case. My brother even emailed me and said, "This is a terrific read."

Fielding: I'm trying to think who it was that said—

Riley: Saul Bellow, wasn't it?

Fielding: No, somebody said, "This is the finest book written by a committee since the Bible."

Riley: The King James Bible. The *New Yorker*. It wasn't Saul Bellow.

Fielding: I want to say—

Riley: [John] Updike.

Fielding: Updike, that's who it was, yes.

Riley: That's pretty good praise.

Fielding: It was a finalist in the National Book Award. The only other report like that that had ever been even near that was the report of the Attica prison uprising, and everybody was really excited. Wouldn't that be neat if we won? I said there was no way in the world that these people are going to let a government book top every other book written that year. There would be new judges next year if that happened.

Perry: Did you wield your red pen?

Fielding: On stuff? Oh, yes.

Perry: Were you taking out adjectives?

Fielding: No, no. The taking out adjectives came as a collective understanding all of a sudden that we were going to get nowhere if people tried to keep adding adjectives in. So that—and you know who else—some people really have an interesting flair. Bob Kerrey has a very interesting flair for writing. He would say, “Let me try this whole two pages on you.” He'd read it to us.

Riley: So how long would these drafting sessions go on?

Fielding: We spent a lot of time, a lot of time. I don't want to leave the impression that we all sat down and everybody wrote something, but we went over and edited every page of this.

Perry: And came to consensus.

Fielding: Right, and came to consensus, which was the tough, the hairy part sometimes.

Riley: I want to come back—we've got just a minute or two before we break for lunch—because we haven't finished this critical question of executive privilege as it relates. We talked a little bit about Rice. The agreement ultimately was for her—were there constraints on her appearing, or she just came and appeared as a witness?

Fielding: There were terms negotiated for her appearance. I forget what they were. There were things like you can't call her again, it's a one-time shot, and that kind of stuff. Also the understanding that this was to be treated as sui generis and not to be heralded by anybody, and everybody agreed that this was not a victory against executive privilege or a thwarting of it.

Riley: And from your perspective, ultimately all that was required was the letter from the commission requesting her to appear and a concession to certain guidelines. There wasn't a lot of lobbying within the administration for them to let her go?

Fielding: Within the administration?

Riley: You weren't working Gonzales or—?

Fielding: I certainly told him what I thought. Yes, I did. I wasn't sneaking behind the commission's back. I was dispatched to go talk to him about things, volunteered that I would do it. I wasn't always successful. I'd work up something and then the commission would say, or the majority, or five-five deadlock.

Riley: I guess part of what I'm curious about is from what we've discussed before, that this was somebody who would have come to the job in the White House without a very highly developed sense about Presidential privilege.

Fielding: Condi?

Riley: No, Gonzales.

Fielding: Oh, yes.

Riley: I think I heard you indicate that you consulted with him on occasions about this very question.

Fielding: Yes.

Riley: So it would be a little surprising to me, as an outsider, if this person that you were providing tutorials to rejected your counsel on material issues at the point where you're coming in and saying, "No, you actually can do this consistent with a vigorous—"

Fielding: If he comes to believe that and can sell it internally himself, because he has to sell it to the President.

Riley: OK, I've got you.

Fielding: And Tim Flanigan was from the OLC [Office of Legal Counsel], so he certainly understood the concepts. Even though he hadn't been in the White House, he had certainly dealt with the issue. Sometimes I'm not persuasive.

Riley: I find that hard to believe.

Fielding: The rest of the sentence is "at the beginning."

Riley: One other question on this and then we'll break, unless you feel like we ought to hold it over, because there may be a longer story about this. This is about the President's own testimony and the Vice President's testimony.

Fielding: Well, that's been pretty well chronicled, but there again, they didn't want to do it. They were resistant to doing it. But politics is the art of the practical as well as the possible. Then everyone was quite taken that the President had done his homework and greeted everybody by name and a little tweak for Richard Ben-Veniste. He had him all right there.

Riley: Was this in the Oval Office?

Fielding: Yes, it was in the Oval Office, and the Vice President was there, sitting right beside him, which was a debunking. It was very clever because it was a debunking of the theory that the Vice President was the one who was calling all the shots and the puppet was over here. It was very well done. Every once in a while he'd say, "Is that what you recall, Dick?"

Riley: So debunking of those people seated there.

Fielding: No, public debunking too, because people came out and said it was very productive. People leaked that the President answered all the questions, did all that kind of stuff. But, as I say, he had been prepared. The worst part of it was it ran so long that—I forget who it was—somebody had to leave. So of course the press saw this one commissioner—then it was very embarrassing. He said anything else—I had worked on that, again at the behest of Lee and Tom, or with their knowledge, to convince them that this was the smart thing to do.

Perry: To convince the President.

Fielding: Gonzales. I didn't talk to the President.

Riley: So the idea of joining them together comes from—

Fielding: No. They cooked that up themselves.

Perry: And the meeting was in the Oval Office.

Fielding: In the Oval Office, yes.

Riley: Why don't we take a break now and have lunch and we can cogitate on what we've learned and be prepared to come back.

Fielding: Is this going the way you wanted? I have no idea.

Riley: It's going swimmingly. You're very accommodating. You're the master question asker.

Perry: We should ask you how *we* are doing.

[BREAK]

Riley: All right, I have just a few more questions about the 9/11 Commission. One was, were there any factual discoveries during the course of the proceedings that surprised you in terms of what you were finding? I guess I'll couch this in a larger question. You're somebody who has been inside, who has a lot of experience inside government in Washington at very senior levels. It's not easy from the outside to know whether the events of 9/11 were in any way predictable or preventable. I guess what I'm trying to get is the sense of your own evolution in thinking, if there was any, about whether there were missed opportunities or whether what had happened was the result of the kind of behavior you would expect of a government presented with a kind of unimaginable attack. It's a fuzzy question, but let me throw that out.

Fielding: The answer is yes. I don't know how to define it. Obviously it's disappointing sometimes to see when things don't work, but clearly they didn't work. One of the major problems I thought was that everybody was looking at this through their own eyes. You get all the facts, the law enforcement versus the investigative powers of the FBI, for instance, and the Justice Department, there was no coordination. And if you stop and think about it, and I'm

refreshing myself as I'm talking because I haven't thought about this for a while, the FBI was trained not to prevent things but find out who did them. It's a whole different approach. And law enforcement is to deter that kind of conduct by enforcing laws and punishing. But the FBI wasn't geared up necessarily to detect; it was to investigate.

So that, and I hate the term "stovepipe," the stovepiping of responsibilities even within the FBI, where one office wouldn't talk to another office and where the resources, even if they were allocated for preventive investigation, were reallocated by the person in charge of that field office. So you discovered that the FBI really was a series of Washington-controlled—and then it had little fiefdoms all around the country and the agent in charge of a region or a city was the guy in charge. He made all the decisions and allocated as he wanted to.

That in a way, when looking at it, it surprised me that no one had seen it, how it was happening. But, I can say, don't forget what their mission was. Their mission was not to detect. There are restraints put upon infiltration by law, at that time even more so. You couldn't willy-nilly take on a group because you thought that they may be advocating some kind of violence unless you had a basis to do it. So it wasn't done. But that surprised me in a way, and yet didn't surprise me, because I've been in government.

Government is inefficient, despite intentions. It's stove-piping. It is what it is; it's fiefdoms. The CIA had been involved in the intelligence community when I was in the military. So I did know of the separate but equal views of the various constituents in the intelligence community. But there again, the CIA, as we reorganized it and suggested it be reorganized here, on paper was already that way. The Director of Central Intelligence was the Director of Central Intelligence. He was not the head of the CIA. But it turned out that he was the head of the CIA, and therefore all the other constituent intelligence-gathering agencies were second, because the guy who was the DCI was Director of Central Intelligence. DCI was supposed to be above the CIA, but it turned out it was one and the same.

We basically tried to set it out again in our proposal so that there is a group above the CIA and Justice and everybody else. Whether it's working or not, it's in fits and starts. I realized when I was in the government a lot of the sharing of assets and the sharing of responsibilities was totally dependent upon the good will of the various people who were heading up those organizations. So therefore, if the head of the CIA cooperated with the DoD [Department of Defense], with the Secretary of Defense or his designee, that was fine. They worked it out because of their personalities. On paper it looks one way, but if you had different personalities it would have deteriorated. I observed that when I was in the government after the commission report. It was kind of interesting to see it.

There were a couple of facts that came out. We all touted the fact that we knew everything there was to know about it. But if you read the report it says in the beginning we understood things might come out later that would change various conclusions that we drew or various factual assertions that were made. That was one of the reasons that everything is footnoted, so that you at least know the basis upon which the sentence is in the book. But one of the things we could never solve, for instance, was whether there really was a relationship between Saddam Hussein and the conspirators, although—then that became a political issue because the Vice President at

that time had asserted that there was a link. We could never really prove or disprove it. There were indicia that there was and there were indicia that there wasn't.

The other thing that fascinated me, and it still to this day does, the head of the conspirators, if you will, went to Boston and he came out—he actually went into Maine and then the day of the attack he and his team went through Portland, through the airport, and then flew down to JFK [John F. Kennedy International Airport] and then got on the plane and commandeered it. I have never been able to understand—we would sit around and we would give leads. If somebody came up with an idea we'd say why doesn't one of the staff investigate this or why don't we look at this. This guy was the head of the group. He went up to Portland. We don't know what he was doing in Portland, but they do know he had been sighted. I think he used an ATM [automatic teller machine] at one point to either transfer cash that he had that was excess that he wasn't going to need or something.

They knew that he had been sighted and his team had stayed at a certain motel. They don't know who visited him or what he was doing in Portland. The original working hypothesis was they got on in Portland, Maine, so that they could fly down and wouldn't have to go through security again. Not so. He had to know it because they had done dry runs of everything and he had to go through security again. As a matter of fact, there was a delay and some of them were actually photographed because they were pulled aside for a minute and then let go. But there was a delay and they almost missed the plane because of going through security again.

One of the reasons we were able to identify these people so readily was it was such a close connection that their bags didn't make it. They found the bags and found information in the bags that linked them directly to the hijackers. My question is, why would this guy have put his entire operation in jeopardy by going to Maine? It makes no sense at all. Because he really did put the operation in jeopardy. We've never been able to figure out what he was doing up there or anything like that. That's one of the links that just fascinated me; we just couldn't figure it out.

Riley: Do you recall the name of the figure?

Perry: Was this [Mohamed] Atta?

Fielding: It was Atta, yes, Mohamed Atta.

Jones: There was never any evidence to answer your question?

Fielding: No. We knew he was there. We knew that they had a visitor. We knew they had stopped at certain places, but we never could figure out what the link was. Obviously there was a link, strong enough, as I repeat, to put that whole operation in jeopardy by having to go through security twice.

Jones: Because the immediate assumption would be they wouldn't have to go through security again.

Fielding: Right, but we know they did a dry run, so he knew he had to. So it's not all answered.

Jones: In the inquiries and the staff work, did the research and analysis end at 9/11, or was there some attention paid to adjustments being made post-9/11 within the agencies?

Fielding: I know there was. You'd go over and Bob Mueller, the Director of the FBI, would have a briefing and he would say, "This is what we're doing now. We're doing this." Everybody was running for cover. I don't mean that in a pejorative sense. I mean that in a constructive sense. They were trying to patch the holes because they knew that they had holes. When the Denver office wouldn't be talking to the Chicago office, and the leads would have tied into something, they didn't swap, they didn't trade.

Jones: You could make a pretty good argument that post-9/11, as far as the President is concerned, and many of his advisors, that there was a shift toward preventive or preemptive strategy. This then became the event itself, 9/11; we will never have that happen again. So that even the justification for, or part of the justification for, the invasion of Iraq was preventive or preemptive.

Fielding: Yes.

Jones: It strikes me that there is a whole period there where this report isn't out—your work isn't done—where attention has got to be paid or was paid in some way to what do you have to do if you're going to preempt.

Fielding: Clearly the government was acting and trying, as I said, to repair the patches before the book came out. They had already worked on it and were trying to do that. But again, old habits die hard.

Jones: Sure.

Fielding: I think that the report probably did have some positive effect on the reconstruction of the intelligence agency and the reciprocity within the Agency. The one thing that we failed at in our recommendations, and we knew we were going to fail, was the reformation of Congress itself, the reorganization of Congress. There were too many rice bowls going to be busted if you did what we suggested you do. We knew that they wouldn't do it. They would mouth it for a while. There was so much jurisdictional silliness. The Department of Homeland Security was set up before our book came out. It was a reaction. But it had, I forget, 72 oversight committees. How can you get anything done if you're up testifying all the time?

Part of the intelligence conundrum is that you have the normal agencies and intelligence-gathering and then you have the DoD intelligence units. They may be smaller in visibility but they've got the money. The majority of the money is controlled by DoD. Even with the intelligence constituent units within DoD it's all controlled; there is so much more money there. So that was a constant source of potential friction. There again, a joint Congressional committee could have solved those problems. They could have dealt with the funding, they could have coordinated everything, but we knew they weren't going to do it.

Somebody asked me a question in one of the sessions. "Do you really think that's possible?" No, I don't. "Why do you do it, then?" I said, "Well, if you don't do it now, why would you ever do

it? You have to try.” But even Lee Hamilton, who was a creature of Congress, said, “It’s never going to happen.”

Riley: You mentioned you disliked the term “stove-piping.” The other metaphor that we have heard from a lot of the people we’ve talked with is the existence of the wall. I get different interpretations from different people about whether the wall actually existed or it didn’t exist and I want to hear your take on it.

Fielding: The wall existed, and everybody afterward acted like the emperor had no clothes. The wall existed, and part of the problem within the commission—it didn’t turn out that way but could have severely damaged the credibility of the commission—was that one of the architects and enforcers of the wall was a member. For all Jamie’s abilities and everything, we didn’t know it at the time she went on. The question is a valid one: Should she have ever been on the commission, or should she have been a witness? But it was handled so ham-handedly by the Justice Department when they decided to lash back at her, it just took the issue right away. But the wall existed.

Riley: Existed as both a legal construct as well as a behavioral reaction.

Fielding: Exactly, and that was the problem. I don’t know that it’s completely gone yet, but boy, they’re sure trying.

Riley: Do you recall an August memo in the President’s daily brief headlined “[Osama] bin Laden Determined to Strike in the U.S.,” which gets a lot of media attention?

Fielding: Yes.

Riley: Do you remember when you first became apprised of this information whether to you it seemed troubling?

Fielding: Well, I knew about it when our people discovered it. It wasn’t like one of the commissioners just suddenly—

Riley: Of course.

Fielding: If you read a lot of them, and I’ve read these things, been on both sides of the desk, is it troubling? Yes. But would it have been a definitive bell? No.

Riley: OK.

Fielding: Not on a day-to-day basis. It’s like there are always times when what was it, “The bulbs are flashing red,” or something like that was one of the captions. There are times when you’re alerted, but that doesn’t mean that you know anything other than there are a lot of rumors going around. The other thing is we really did get an appreciation, at least I got an appreciation, for the cunning and the cleverness of these people. They knew how to play us like fiddles. They would send bogus alarms. They would start bogus backfires. But there were also some times when we were picking up really legitimate stuff and it’s hard to differentiate.

Riley: Sure.

Fielding: It didn't end with 9/11 either; it still goes on. It's a very clever enemy.

Riley: One other question on this, and this is to ask you to think about the aftermath of 9/11, particularly with what you're picking up as a member of the commission. That is, the mentality of the administration after the event. Are they defensive in terms of dealing with the investigators? I'll just stop there.

Fielding: You mean strictly dealing with the 9/11 Commission?

Riley: Yes, strictly dealing with the 9/11 Commission.

Fielding: Defensive? Well, we had the executive privilege issue, which loomed over everything. There was an overriding suspicion, to be really candid about it, of some of the members of the commission from Day One that they were up to no good, but mischief. So yes, there was a little of that. But by the same token there was also a heck of a lot of cooperation. But I guess—it's hard to say was it a defensiveness. There certainly was a lot of suspicion that this was seeking to get dirt much more than seeking to nail one administration over another.

You know the story of bin Laden, for instance, and it's in the book. It just doesn't get as much attention as I would think it would have. There were some really serious missed opportunities to get him during the Clinton administration. In one of them dear Richard Clarke, who is a story in and of himself, was seriously implicated as having tipped off a camp of some people that we were going to use a Predator at a certain outing if you will, a certain meeting. Suddenly everybody dispersed. But of course there was never any accusation of that. Then afterward Clarke became kind of a folk hero and the media wouldn't let anybody touch him after that.

Riley: Do elaborate. You said it was a story unto itself, but it would be important for us to hear.

Fielding: Richard Clarke was interviewed by the joint committee, which is the predeceasing organization to the 9/11 Commission. He was interviewed by our people under oath. He was set to testify. Then word gets back that he's going to be on *60 Minutes* the day after he is testifying and that he's got a book. When he testifies, his testimony is different from what he gave to both other organizations prior to that. I just thought he had no credibility at all. I had seen some of the stuff that he had written. Some of the documents we had praised the administration and how it reacted and how no one could have ever detected this. All memos, when he was polishing the apple after 9/11. But he didn't get the job he wanted and he was peeved. By the same token I just found that his credibility, because of both of those reasons, was nil.

Jones: Defensive isn't quite the descriptor of the position of the White House or the administration. Would "uncertainty" be a descriptor? That is to say here again is this unique organization outside the regular separation of powers. Would it be that uncertainty as to what is going to happen or who are they? How are they jelling?

Fielding: They were trying to figure that out all the way along I think, "they" being the administration. The word I would use probably is "wary." Suspect, but wary that the motivations—don't forget the timing of this report. This report was going to come out before the

political conventions. If the commission had not pulled itself together in the end, the report had the potential of being very partisan. But as I said, once we got through the fact-gathering stage and all the elbowing and everything that went through it, it came together. The first part of it was where the wariness came out. There was a lot of sensitivity, a lot of suspicion, in that sense. But it was suspicion of motive more than we're hiding something. I hope I've responded to you.

Riley: The rationale for my question was a little bit different. It wasn't in relation to the commission. I'm trying to figure out how to phrase this. It's delicate, and I don't want to leave the wrong impression in the transcript, but it was more a question about whether—I can see in my own career if there is a bad event that happens that I'm going to be very introspective and analytical about whether I failed at some point. I'm wondering whether in the course of your dealings with the administration, the extent to which there was—"guilt" is not the right word, "culpability" is not the right word, but this sense that we did miss something and we can't afford to do that again.

Perry: Responsibility?

Riley: Maybe responsibility.

Fielding: Not to interrupt you, but it did happen and we did fail. I mean I'm the administration talking right now. They missed it. They didn't get it. The real question is can you patch it up, can you make sure it doesn't happen again, and the other question is, is there some flagrant culpability that should be looked at.

Riley: OK.

Fielding: But I think that's normal. That has nothing to do with anybody. Look, you've got to remember the context of this too. The families were really adamant and they were very disappointed in the joint committee.

Riley: Sure.

Fielding: Which really didn't get too far and kind of ran out of runway, they ran out of time. But they were also very proud of the fact that they had pushed so much politically. Look, we got this commission. One of the fine guys who was on the commission was the darling of the families because he was the one who worked it on the Hill, Tim Roemer. So they had their guy already on the commission. But remember, these were the same people who really wanted to see people hanged from lampposts. That doesn't solve the problem; that's not our job. Our job was to figure out how it happened and how to prevent it from happening again.

Riley: Not only that, again to further the discussion, at this point. If you've got people who are out to see that somebody is hanging from the lamppost, that's a disincentive for you to be introspective and to deal with the question of responsibility in the same light as you would if you're in a completely safe environment for that kind of introspection. I'm not trying to get into pop psychology too much, I'm just trying to figure out—

Fielding: We're into pop psychology, but what you're saying is very natural. But if you think that somebody's motives are suspect, you're not exactly going to open the door and say, "Come

on in and look at everything I have.” Especially if you really believe, as most people in government do, that if things are classified, the reason they’re classified is because disclosure of them will hurt the national security interests of your country. If you don’t trust what they’re going to do with it, you’re not going to give it to them.

Riley: Got you, OK.

Fielding: I think that’s really the nub of it as much as anything.

Jones: There’s a dimension beyond that, too, it seems to me. Just as a matter of good government, responding to the question on the part of, in this case the administration: Is what these people are going to do really going to be helpful?

Fielding: That’s what I’m saying. When I say suspect, that’s exactly what I meant. Is their purpose a constructive purpose?

Jones: Right.

Fielding: Or is their purpose a political purpose? Or in their stumbling around with the political purpose they’re liable to hurt national security.

Riley: Right.

Jones: That’s what I was trying to determine.

Fielding: That definitely had something to do with it. That’s why I said wary, because that’s what they were. They were wary of the motivations of the commission.

Riley: This is extremely helpful because the commission was not viewed as a safe haven for pure introspection on all involved. It has an effect on the way you react.

Fielding: I really don’t want to be partisan in this, because I tried not to be when I was on the commission.

Riley: Sure.

Fielding: But forgetting Tom Kean and Lee Hamilton—and Lee Hamilton was under a lot of pressure from the House majority leader, a lot of pressure. I can’t think of his name, the guy who got thrown out—I’m getting bad on names today. But Max Cleland, very suspect for his motivations. He hated the administration. They had lost him his seat. Richard Ben-Veniste, no question about his bias. Jamie Gorelick, a different view, but very political person, and the wall, which people didn’t know at the time but they knew she had been there, if you will. Tim Roemer is the darling of the families.

OK, so there’s your lineup on the Democrat side. Then you have Slade Gordon, who the administration—

Jones: Was he out—

Fielding: Yes, he was, but the administration didn't realize at the time that he was appointed, whoever put him on, that he had asked for a federal judgeship and Gonzales had turned him down. But the Republicans didn't realize that. I knew—Lehman was a [John] McCain guy, was put on by McCain. [REDACTED]

Riley: [REDACTED]

Fielding: [REDACTED]

Riley: All I was going to say is that if rather than permanently redacting that, if you could put a lifetime hold on it.

Fielding: But I want it in the context of what I'm talking about. Jim Thompson is a Republican Governor and everything else. By the same token he was more on the liberal side than the conservative side of the Republican party. Then you've got me. Nobody knows what I am except I know executive privilege. That's what the administration was looking at. Tom Kean turned out to be, I think, a good chairman, but the White House seemed very disappointed in Kean when he first started. That's what they were facing if you're looking through their eyes.

Jones: I wanted to ask, just from your—

Fielding: Excuse me, let me say—and I mean this, it's not just because it's on the record. Collectively these people all pulled together. We really did work together at the end, and whatever personal motivations were kind of put to the side. It was as if everybody realized that if we continue the shenanigans, we're of no credit and of no value at all.

Jones: Was there a turning point for that, or I take it what you're describing is, in a sense, they all came regardless of their own personal biases to look at the larger purpose of what they're doing here.

Fielding: Yes.

Jones: And this has got to be in that direction.

Fielding: That's exactly right, and it goes back to the decisions—once the investigation phase was over and the soapboxing was over—

Jones: So that was the turning point for you?

Fielding: It really was, when the decision was made to take out the adjectives. Basically, that's my phrase, but that's what it really was.

Jones: I wanted to ask, just from your personal perspective, about the personal dynamics as they developed during the time of the commission, working with others. You said you didn't really know a lot of these people well. Were there people who came to really, from your perspective,

shine, really contributing, that you felt increasingly comfortable with in regard to the purpose of what was going on there?

Fielding: Unexpectedly so? Is that your question?

Jones: Yes. Unknowledgably so.

Fielding: I didn't know Bob Kerrey at all, but I really came to think very highly of him, his intellect and his personality. That's one that does come to mind. But everybody—of course we're ignoring poor Philip, and Philip was really terrific in this thing. There again, Philip was attacked by some of those people that I just reeled off. They wanted Philip out of there because he wasn't fitting into—he helped to block certain general counsel potentials and this kind of stuff. He was good. He did a good job.

Perry: The families of the victims were also critical, were they not, of him?

Fielding: Of Philip? Yes. That was generated. It wasn't just suddenly, "We don't like Philip."

Riley: Were there any disputes about publicly releasing materials? Did everything get out in the public domain that you thought should have been as a result of the—

Fielding: Oh, I had no problem with the stuff that came out. I would have had problems and we would have had problems if we had released classified information that was not susceptible to being sanitized. But the other thing I should mention about the families—I have to tell you—we weren't sure when the book was finally written, although we knew that some of this stuff had been whispered in their ears, that certain things were happening. But the day we went to our final meeting, when the book was officially presented, we brought the families in beforehand. They were all sitting there.

We thought, *Oh, God, this is going to either be awful*—because they were going to be in the room—and the best thing is they came up afterward and they asked us to sign the books. So we knew we were home safe.

Jones: Nobody came up and said, "Take this, I don't want it."

Fielding: No, no.

Riley: Anything else on this, on the commission?

Jones: Probably.

Riley: We can come back to it. Barbara, do you have something you want—

Perry: This is an offshoot of 9/11, but I was taken in some of the literature by the emergency book that you helped to put together in the aftermath of the assassination attempt.

Fielding: The 25th Amendment?

Perry: The 25th Amendment, right. But an emergency book, so-called, to give instruction about the 25th Amendment to those who needed to know in any administration. Did you go back to that after you had worked on the commission in light of what happened at 9/11? Did you rethink the emergency book?

Fielding: No, but I suddenly was looking at it again two years later when I went back in. I was delighted to see that it was everywhere. It was in every shelter. They had copies—it's now part of the kit. But no, I didn't go back to revisit it. There are so many catastrophic things that can happen that the 25th Amendment just can't apply to. We actually had a session at Fordham about six months ago at which I spoke. It was a day-and-a-half session on the 25th Amendment. How many issues can you chew out of the 25th Amendment? But they had every permutation. People were talking about it back and forth. I should pass that on for your addendum, my remarks.

Riley: Good.

Fielding: But it was so funny, just to digress for a second. In the Bush administration, Bush 43, it was so smooth an acceptance of the 25th Amendment, whereas in the Reagan administration, should we, should we not. The President—I knew he had to and he knew he had to, but he didn't want to tie anybody's hands in the future. So I contrived this letter that he signed that just said I'm doing this, but—we followed the 25th Amendment but then we just said, "This is not to bind anybody else in the past. This time, with Bush 43, he's going to have a colonoscopy, let's go." We're off to Camp David. They have medical facilities there that rival any hospital. It was just done there, on the spot, nothing to it.

Riley: Anything else on this?

Jones: No. I would like to talk some about the 25th Amendment at some point. Is this the time?

Riley: Why not?

Jones: I took the trouble of reading it again. I hadn't read it for a number of years.

Fielding: Pardon me. You know the Miller Center had a whole—what do you call them?

Perry: Commission.

Fielding: Was it a commission?

Perry: On Presidential disability.

Fielding: Birch Bayh was part of that commission. He was at this event that I went to at Fordham.

Jones: It occurred to me how difficult it must be to write an emergency book, but beyond that imagine what could happen if we got to the point of the President saying, "Well, I'm able again." That whole section of the amendment where the President officially declares he's ready to have back at it after a group of people have decided that he shouldn't be.

Fielding: But there is a rebuttal device.

Jones: Yes, that's what I mean. Beyond that, the potential of rebuttal from—

Fielding: “No, you're not.”

Jones: Imagining the conditions, the circumstances, under which that could happen is very scary.

Fielding: Yes, and imagine—as I say, they spent a day and a half on scenarios, but just imagine a nuclear holocaust. You can't find either of them, President or Vice President, and you can't find the members of the Cabinet, what do you do? Men of good will will have to figure out something. As I say, you can't write a chapter for everything that is possible. We had, in the Bush—when I say Bush administration I mean 43 unless I tell you otherwise.

Riley: Good.

Fielding: We had all kinds of drills and stuff about that. Even January 20 we had a proxy government outside of Washington set up with very junior people, but it was set up in case something happened.

Perry: January 20 of 2001?

Fielding: No.

Riley: Two thousand nine.

Perry: Two thousand nine, for the transition.

Fielding: Yes, at that moment, if you took both of them out, you have nothing left there.

Riley: Were you involved in the exercises during the Clinton years, the sort of emergency alternative government exercises that we read about that Cheney had been involved with?

Fielding: In the Clinton years?

Riley: I think during the Clinton years.

Fielding: The answer to your question is no, I didn't even know about that. But they certainly had it at the Bush-Obama.

Perry: I guess I have just one last global question, and it's probably trying to prove causation that can't be proved, but do you think that the implementation of most of the recommendations from the commission, that that is responsible for the fact that we haven't had a 9/11 repeat?

Fielding: Absolutely, and we all deserve medals. *[laughter]*

Perry: But do you stop and—

Jones: Not to be redacted.

Riley: We'll put the laughter in italics.

Perry: But you must think about the good news that we haven't had a repeat.

Fielding: Absolutely.

Perry: And you must ponder why that is.

Fielding: First of all, the recommendations were made, and it's funny, people said, like you said, as I said one time when I finally did go on television—somebody asked me that question. I said, "You know, we didn't write these recommendations as a Chinese menu. We think they all should be implemented, not just pick and choose the ones you want or the ones that are easy." But to the extent, if nothing else, yes, the recommendations implementation has helped because awareness is what helps. People have to be aware that they have to be aware, that they have to work together. They have to be alert to certain things. A lot of attempts have been thwarted.

We've been lucky. As you've probably heard too many times, the problem in dealing with this threat of terror is that we have to be right 100 percent of the time; they only have to be right one percent. So how long can your luck hold out, so to speak. But the implementation of this and the reorganization and the awareness have certainly contributed to that. The thing on the west coast a couple of years ago, before I was back in the government, I'm positive—but that was picked up by basically an alert citizen and an alert border guard, just picked it up. Would never have done before.

You say that and yet the 20th hijacker got stopped in Miami with Atta sitting on the other side in a phone booth waiting for him because an ICE [Immigration and Customs Enforcement] person, or whatever they were called at the time—there was something funny about it. But we heard testimony of so many people who said, "I'm working and I'm trying to detect people and I can see people on a line that I really want to question and I'm not allowed to question them because I'm being selective and I'm picking out people because of the way they look." Well, you're damned right, you're picking out people because of the way they look, but they were criticized for it, the agents.

So in that regard I would say the commission report would help because it would let people know that that is their job. Of course you can't just say, "All Arabs to one side. We're going to strip-search you," or something like that, but by the same token, I don't know about you, but when I get on an airplane I look people over and I do figure out which ones are the—first of all, it's easy to pick out the air marshals. We all know the air marshals; we can pick them out right away.

Perry: They don't read books.

Fielding: They don't read books. They don't drink.

Perry: And they don't talk.

Fielding: They don't talk, except occasionally they talk to each other. Strangely enough, if you're the first person on the plane, they're on the plane and that's the best tip of all.

Jones: When you went back into the White House did you ever have a conversation with the President about the commission and its effects?

Fielding: Yes, I did. Also it came up in meetings and stuff all the time. He was positive about the commission.

Jones: Was he?

Fielding: After the report came out. As I say, I think a lot of the perceived and actual resistance of the administration to cooperation was really because they didn't trust the commission.

Jones: And he personally felt good about the Oval Office meeting?

Fielding: Yes, he did. He felt very good about it. Yes. I knew that from Gonzales afterward, that he felt it was positive. I said I thought it was too.

Riley: You continued through the course of the proceedings to be a liaison with Gonzales on these issues?

Fielding: Only if there was something specific. There was a rumor at one point that Jim Thompson and I were given questions to ask. I don't know about Thompson, but I was never given questions to ask, although I did one time ask the NSC [National Security Council] people to give me a briefing on an aspect of—I forget what it was, it was a classified briefing. Something, I just couldn't get it straight in my mind. I did that.

But other than that I remember at the time saying, "You were coached." I wasn't coached. Maybe Thompson was. I wasn't given any questions. But I did have a telephone conversation the day, I guess it was the day that Richard Clarke testified. They did call me about something, but it wasn't giving me questions, it was something that somebody leaked. But I do know that Thompson left the hearing to take a phone call and came back right in the middle of the hearing. He left the spot and then came back. I never asked him if somebody fished him a question or not.

Riley: Have you had occasion to look at the book that Hamilton and Kean wrote about the commission?

Fielding: I probably did. I have it. I probably leafed through it. I know I didn't read it.

Riley: It's an unfair question. I always criticize my colleagues in interviews for asking, "Have you read this?" because it usually—

Fielding: I don't know that I did. I'm sure if I got the book I went to the back of it, looked under the F.

Jones: The Washington read.

Fielding: Absolutely. They used to sign the books on the page in the back where the person's name was with a little note, "I thought you'd look here first." [*laughter*] I thought that was clever.

Riley: The only reason I was going to ask was in the event some future user of this transcript was looking for a more thorough accounting of this they might well go to that book and I didn't know if you had found it authoritative or not.

Fielding: Let me do this. Among other things let me go back and take a look at it and then I can tell you if I actually read it or not. There are a lot of books on this stuff. [Fielding 2019 edit: P.S.: I did read it; it is authoritative.]

Riley: I'll ask you the same question about the one that Philip Shenon wrote.

Fielding: I did not read that.

Riley: Did not.

Fielding: I knew one of the coauthors of that.

Riley: Interesting.

Fielding: His name wasn't on it.

Riley: Fair enough. Anything else on this? If it comes up later we can come back to it. Are you OK to continue?

Fielding: Actually, I should call my office. Can we take a five-minute break?

Riley: Sure.

[BREAK]

Riley: So we've done the 9/11 Commission. Do you feel like you were in good standing with the White House after this experience for the first couple of years?

Fielding: Oh, yes, I didn't have any sense that there was any—I think they were relieved when the report came out, were not unhappy. Nobody ever picked up the phone and said, "Attaboy."

Riley: Any significant engagements with the administration in the campaign or thereafter, 2004?

Fielding: No.

Riley: The next big thing on the calendar is your appointment.

Fielding: Right.

Riley: So there's not anything to talk about before the appointment?

Fielding: I don't think so.

Riley: How is the subject broached with you?

Jones: I want to ask why you, and why did you accept?

Fielding: You've been talking to my wife? [*laughter*] Actually, on the record, I'm going to give my wife a tribute because I heard for so many years, "Oh, yes, I used to be the wife of—he's sitting there with a movie star on one side and the Ambassador on the other side, and I'm sitting there with a guy who only speaks Bulgarian." I heard these stories for years. So I thought she was pretty soured on government.

I got a phone call. It was in December but I was home for some reason; maybe it was on a weekend. I hung up the phone. She said, "What was that all about?" I said, "Why do you ask?" She said, "You have a very funny look on your face." I said, "It was a phone call asking if I would consider going back in the government; they want me to consider going back in the government." I looked at her. I'm just waiting for the shockwaves to hit me and she said, "Well, I think he needs some help." That was it. But I didn't say yes right away. I had to think it over. I was in a very active law practice and I would suddenly have to just do it. But why? Because I was asked. I can't explain it other than that.

I thought—maybe it's old-schoolish, but—if the President of the United States asks you to do something and you can do it, you should do it.

Perry: Did he make the phone call to you?

Fielding: He made one of the phone calls.

Riley: Who was the first person you heard from?

Fielding: Josh Bolten, kind of feeling me out.

Riley: Had you known Josh?

Fielding: I knew him, but I didn't really know him, to answer your question. Then I thought back and I remembered a telephone conversation I'd had with [J. Michael] Mike Luttig, Judge Luttig, who used to be on my staff in the Reagan White House along with this kid named Johnny Roberts.

Jones: Not bad.

Fielding: They were terrific. But afterward I kind of put it back together because he was calling me and he was bitching about the White House and didn't know what they were doing. He had a particular ongoing feud with another federal judge who was very close to the Vice President. He said, "We've got to get that woman out of there—" Whatever he said, he was talking about Harriet Miers. He said, "If we're not careful they're going to appoint—unless we can find

somebody, they're going to appoint—" and he mentioned this judge as new counsel to the President. I was kind of dismissive of it but later I thought one of the guys in the White House who worked with Josh was one of Mike's former clerks. So I'm sure that was a probe that I just wasn't picking up on.

But in answer to your question, if somebody says to you, "I'm making this call not on my own behalf, but on behalf of your country," I think you've got to say at least you'd consider it.

Riley: How long did you—you said it didn't happen immediately.

Fielding: The first phone call was from Josh and it didn't happen right then. I said, "Let me look and let me survey." I was thinking, *Let me talk with my wife*. But it was after that, a couple of days after that. Then the President wanted to meet with me because I had not said yes. It was the day of Jerry [Gerald] Ford's funeral, as a matter of fact. They snuck me into the White House when everybody was looking at the funeral. We met there, went up in the Residence, just the two of us. He introduced me to his wife and we just went in a room and sat and talked for an hour and a half, talked about a lot of things.

Jones: Can you say anything about what the case was that was made, or did it not have to be at that point?

Fielding: At that point it really didn't have to be, as long as the chemistry was right. I was concerned about that. Because he had always surrounded himself with—the two prior counsels that he had were old Texas people that he used before. As I say, I knew him from before when he was basically the Vice President's son, and kind of an angry fellow at that.

Riley: Sure.

Fielding: I had seen him a couple of times at political events. He was always very nice. Although I hadn't seen him during the transition, he knew what I was doing because I'd talked to him on the phone. He was always very nice and gracious. "He's the guy who pulled our cookies out," and would say something to his brother. He was always very loquacious but nice, very well-spoken about me. I didn't know how that would size up, to be honest with you.

He's interesting in a way. One of the things he said—I'm being careful here about our conversation, but one of the things that doesn't sound too executive privilege-y was that he said, "Now I want you to understand, you're not seeking the job. You're interviewing me, basically. I want you to take this job and I want you to really be comfortable about the job because it's yours if you will take it." So we had—

It's funny, because I came away from that meeting and was reinforced afterward that although you might not agree with what the President did or the steps that he took when he explained what he was trying to do and everything, I came away with the conclusion that you could never question his motive. His motive wasn't political; his motive was that he thought it was something he *had* to do. Decisions he made were decisions that he *had* to make. That was reinforced throughout the time I was there. Afterward he made tough political calls because he thought they were right, not because they were political, or he wouldn't have made them. It was just that simple. So obviously I accepted.

Jones: What you're describing is what made the chemistry right?

Fielding: Yes, I had a comfort level and I also sensed that he had a comfort level. I didn't want it to be an awkward thing. I was used to older Presidents, not one where I'm older than the guy. Just as an aside I have to tell you, speaking of that—Three branches of government, OK. John Roberts [Jr.] is now Chief Justice Roberts, head of one branch. George Bush was President, head of another branch, and John wanted to come in and pitch the President on judicial salaries, wanted him to support increased judicial salaries. He comes walking in and it was the funniest feeling for me because I'm sitting in this room and I've got two out of three and I know them both and I'm older.

Jones: Quarterback from—

Fielding: Yes, plow kid from Mechanicsville. It was just a funny feeling to realize—that day was very funny. John came in and he started making his pitch. He is very articulate, doesn't have any notes. The only time I ever saw him not articulate was when he muffed up the swearing in, and boy, we ribbed him on that. He starts making the pitch and the President said, "You know, I really think the judiciary should have an increase. Fred tells me the problem is the coupling. Congress wants to couple their salaries with the thing. I have no problem decoupling that. I think the judiciary should get an increase. Now the amount, I'm not taking a position on that. That's up to Congress, but I'm supportive of an increase and decoupling as well."

Then John started in on what he was prepared to say. The President said, "You make the sale, get out of the room." We all had a good laugh with that.

Perry: Was this in the Oval Office?

Fielding: Yes. When I first saw—I had forgotten this. I used to see George Bush when I would go to National Republican Governors Association meetings. You would have all these egos in one room. But if George Bush walked in that room, everybody flocked to George. He was a guy who had a nickname for everybody. He was the guys' guy. That's the way he was with people. People say he is a little cocky. Yes, he is a little cocky sometimes. But that's him. But he is what you'd call a guys' guy. And he's funny. He's very tongue-in-cheek funny sometimes.

I was up on the Hill one day and I had been pretty successful in getting in and out of the Hill without the press figuring I was there when I was talking, trying to negotiate with people on the Hill about executive privilege and Harriet Miers and testimony of Karl Rove and everybody. One day they nailed me; they had the place so staked out, the press, I just knew. I got in without them knowing I was in, but I knew I couldn't—I had to go from one side of the Capitol over to the other side, I just knew I was toast. So I just opened the door and tapped one of them on the shoulder and said, "Who are you looking for?" Then they followed me.

Anyway, I had to walk over and the guys are running, taking pictures, falling over backward. The cameraman is following me as I'm walking from the House to the Senate. When I went back after the meetings I walked in the Oval Office and the President wasn't there at the moment, but a couple of staff were assembled, were just going to talk about something. The guy says, "Hey, man, you look—you did the perp walk." The President walks in. He says, "Hey, guys, this ain't

Fred's first rodeo." [laughter] If I ever write a book, that's going to be the title. But just to illustrate, that's his sense of humor, "This ain't his first rodeo."

People liked him and he was wonderful one-on-one, just like a lot of people are. We talked about Dan Quayle earlier, but he also really was very impressive in a one-on-one situation. He's very proud of being President. It sounds funny to say that, but he really wanted people to covet and honor their service. When anybody left the White House, at least the two years that I was there, anybody who left the White House who had worked there got an invitation to bring their family and come in. The President would take part of his afternoon and he'd meet with the family, have pictures taken. If there were little kids he'd give them a little token or something. He was terrific with people. The reason we were there is that if it was one of the people under my staff, I would be there to give a whisper beforehand who it was and that kind of stuff. But he was just terrific.

Jones: The interview that is in this material, I think *Legal Times* maybe?

Riley: I think it was.

Jones: In any event, you were asked about Reagan and you described him as fun, that serving him was fun, the personal relationship and such. Is that the same with Bush? Or to put it differently, would you compare the two in that regard, on that personal note?

Fielding: Yes, I would compare them favorably. As strange as it sounds, I saw Bush on a much more frequent basis than I did Reagan. It was just the way the staff is structured, the events as well. But yes, they're different, entirely different. Reagan was fun and genial. This President was fun and he had a lot of bad problems on his hands too. So he had to deal with those as well. He motivated people. I've often wondered, if my assessment is right, that some of the people that he was loyal to—he was tremendously loyal to people who worked for him—if that wasn't sometimes misplaced, because I'm not sure he got served as well as he should have in certain instances. None in particular, but just the sense that he sometimes would hang on out of loyalty when—

Jones: Which one are you talking about?

Fielding: I'm talking about Bush. He would hang on out of loyalty probably longer than he should have. But again, to go back to taking his time to give photographs to secretaries and their families, and it was his own time. At the end of the administration, we were joking one time and I said, "What are you going to do with everybody? You tell everybody to sprint to the finish. Is everybody going to line up the last day and come in and have their pictures taken? Is that the prize for sprinting to the finish, you don't get a picture?" He set up a program and for the last two and a half to three months everybody who was going to stay there came in in advance and had their pictures taken.

You say that's a little thing, but it's the first time I've ever seen it in the White House other than with an Assistant to the President and their family. Sure, we get it, but they didn't take care of the junior people, everybody he did it to.

Jones: Very much his father's son in that regard.

Fielding: Yes, in that regard very much his father's son. The same with the notes. His father is always sending notes. My nickname, he constantly writes that. "Fearless," he says. "Remain fearless," he writes at the bottom of the picture. Anyway, I forget where we are.

Jones: I want to turn more directly to you at this point. The man who really developed this oral history project, Professor Jim Young, refers to "the professoriate" in Washington, and the identification of those members of the professoriate applies directly to you.

Fielding: I shouldn't be mad?

Jones: Not at all. I don't know if it's something you can discuss or you thought about, but I'm fascinated by the type of person—of course, that you fit with Lloyd Cutler and a number of other people who were there, typically in law firms, and come to be respected and trusted. The image is of fairness and competence and so forth. So what's it like to be—

Perry: A wise man, that's the label that you're given.

Fielding: That's nice.

Jones: It strikes me as a very important part that is written about almost not at all, in part because of the kind of position that such people hold. A part of it is because they don't get in the papers. My grandmother once said to me, "Charles, now don't you get into the paper." That gives some clue as to how she viewed me. So if you can put it—

Fielding: Just on that theme I think that when I joked about writing a book—I have the title for the book, but I don't think lawyers should write books. I think they only end up—if there were a way I could write a book that my children and grandchildren could read, I'd like that. Maybe this is the answer. But if people trust you because they trust your discretion and they know that your judgment isn't clouded by your own halo or your own searching for recognition—think in your own lives. You would seek out somebody like that to discuss or handle something that was delicate as opposed to somebody you know sees this as a wonderful opportunity to get their name in the paper or to be shown to be "in." It's a short-term goal for some people. It's a short-term win for anybody who does it, I think. What did you call me again?

Jones: Professoriate, a member of the professoriate.

Fielding: It's flattering to have somebody seek your judgment, the President of the United States. It is that. But it's also quite a responsibility. You have to give it your best shot whether you're saying something to him that he doesn't want to hear or you're saying something that is bucking some of his favorite gurus around him or his political people. If you're in a position where people will accept that, it's a very rewarding feeling. You just pray every day that you don't make a mistake, don't miss something.

Jones: There is also, is there not, an accumulated wisdom about the workings of this separated system that we have and to what extent in your law firm were you able to accumulate that kind of wisdom that comes from being known by others in turning to you?

Fielding: As with the President, the most rewarding thing for a lawyer, I think, is to become someone's consigliere. They don't just ask you the difference between the dative and the ablative case, they don't care about Section 2374 of whatever code. But they come to rely upon you as their problem solver, their sounding board. That to me is the highest and most rewarding part of being a lawyer and part of what I really have come to grow into and love. I can't say that I totally felt that way during the Nixon administration, but by the time I concluded I did not want to be a judge, for instance, that was part of it. I really enjoyed that and the challenges that that presents. It's a responsibility if somebody entrusts you with their worst fears and their biggest problems. It's even more rewarding if you can ease them through it.

What's that song? "If you're going through hell, keep on moving before the devil finds you there"?

Jones: And again, the chemistry really does have to be right.

Fielding: Oh, yes.

Jones: For the President to have that kind of trust, and you have to be sensitive enough to what that trust really means, given your position.

Fielding: To be sure. That's why I wanted to have the meeting, to make sure that the chemistry was right. I don't know. I met President Clinton a couple of times, handshake, but the one time that we really talked was during the 9/11 Commission, when we interviewed him. This is totally irrelevant to what we're talking about, but a little relevant to what you're talking about. I don't think I could be counsel to President Clinton. I just don't think I could. So when I say if the President calls and asks you to do something, you do it, but you only do it if it's going to work. Not to get a notch on your gun.

Perry: That was a chemistry issue, you thought, on meeting him? Ideology, character?

Fielding: No. It wasn't political, it was more character. With Reagan and with Bush I never questioned the intent or the integrity with which the issue would be dealt; I don't think I would have felt that way with him. That isn't to exclude Nixon, because nobody ever talked to Nixon at my level.

Perry: The chemistry issue and the character issue were not issues with him.

Fielding: With Nixon?

Perry: With Nixon.

Fielding: No, I'm just working, although there was—

Jones: [John] Ehrlichman once said that when John Volpe or Walter Hickel would come to the Oval Office Nixon would hide under the desk.

Fielding: That's awful [*chuckling*]. Who was the CIA director—Jim Woolsey. Woolsey was in Clinton's—and for some reason Clinton appointed him DCI and then would never see him. One

year they detected a model airplane that had been directed toward the White House and it actually had hit one of the windows. It was destroyed. Everybody said that was Woolsey trying to get in to see the President. But to answer a little further to your comment, you really have to have—I really don't think I could have served him because I didn't have that feeling that expediency wouldn't trump what he should do and how his constitutional prerogatives should be exercised. There's a lot of power in that room.

Jones: Right.

Fielding: If it's tarnished—part of that is character.

Jones: Did you ever talk about these kinds of issues with Lloyd Cutler? Members of the professoriate don't necessarily have conversations, by the nature of their trust.

Fielding: I really like Lloyd, but I don't think he thought anybody else was in but him.
[laughter]

Jones: Why are we laughing?

Riley: In the original conversation that you had with President Bush, was that exclusively about issues related to potential service as counsel or are there discussions beyond that?

Fielding: Well, we discussed a lot of things. It was an hour and a half, just the two of us. I'm sure there were some pleasantries about wife and kids and stuff like that, but I think for most of it I was really trying to make sure that the chemistry was right, as we discussed. It was very important to me and I think it was important to him, although he had already committed, so to speak. I was concerned as to how he was going to deal with Harriet Miers. She didn't know. She had no idea at the time.

Riley: And you knew that she was unaware?

Fielding: Yes.

Riley: How did you come by—?

Fielding: I asked. So that was a delicate thing. I'm just trying to think—actually, even after the decision was made and finalized, it didn't become public for some time because they had to tell Harriet and give her a little graceful period, though it didn't turn out to be too graceful, not because of her part or my part, but just it leaked out.

Riley: Of course. What about the question you raised earlier about—

Fielding: I feel bad I said that about Lloyd. Nothing propinquities like propinquity. That's it.

Riley: The issue I was going to ask about was the point that you raised earlier about his relying on old Texas friends to serve the position. I'm wondering how you go about getting a reading from somebody about departing from that model for something very different. You just have to deal with it frontally or—

Fielding: Yes, he knew I was not of that—

Riley: Of course, smart enough to know that.

Fielding: You didn't have to be too smart. But that really wasn't a concern of mine. My concern was I didn't know what was under the rocks in the garden. I had to deal with that and I had to readjust the staff and I only had two years to put it together.

Riley: Now that has got to be a hard thing to get at, to ask the President of the United States what's under the rocks in the garden.

Fielding: Well, you don't ask the President of the United States except in general senses of what he's concerned about.

Riley: Sure.

Fielding: But there were things that occurred that he had no idea about. I mean even this whole business about the Attorney General, the U.S. attorney firings and dismissals and stuff. He didn't know anything about that, and I assumed nobody in the White House knew anything about it until Gonzales called me and said, "I have an email here from Harriet Miers talking about it." The staffing is unique and to itself.

I had been so blessed in the Reagan years to be able to put together a staff of really outstanding people, and I was really concerned that I wouldn't be able to do that in two years because everybody knew it was only two years. It wasn't exactly a walk in the park because everybody knew that our office was going to be right in the front of all the oversight attempts and everything else. That was mitigated, as it turned out, but the potential was there that if we just run it over—because the objective as we read it and as I read it and was told by people on the Hill was to shut down the White House, period. Just tie it up in knots. So recruiting—I was very concerned about it, as I say, because I was so blessed in the years past, people like Luttig and Roberts, terrific people. We've all remained very close in the years since. But I was able to attract—I guess it's the lure of the White House as much as anything else.

Also, this sounds very egotistical, but I think that within the administration when I came in there, I think that people who would otherwise have thought about going to the White House Counsel's office were less hesitant to do it even though there were only two years left.

Riley: Sure.

Fielding: Reputation unfortunately wasn't, externally, as terrific as it should have been. I'm not making aspersions that it wasn't, but the view of it from the private sector was that it was kind of messed up. I knew that I was going to be busy, so I wanted to get a deputy who could really run the office, the mechanical side of it, so I wouldn't be distracted by that.

I called upon a guy who had been a client of mine who had been in government, had a lot of government experience, political, and he had been, I think, Assistant Secretary under [Robert] Mosbacher at Commerce. He had had a couple of posts and he was very astute politically as well. He was then the general counsel of a client of mine. So I brought him in and he agreed to

come in and be my deputy. He was my deputy for not quite two years because at the end I had two higher-ranking associate counsel and I wanted to elevate them so they had the credential of being a deputy counsel for three, four months. He thought that that diminished his role. I said, “What do you want to be called, ‘principal deputy’?” He said, “No, that isn’t the point.” He thought he’d done enough anyway, so he left in September. I was a little annoyed at the time, but not as annoyed as some of the other people in the White House were about it. They were really annoyed about it.

But he left, and January a year ago he was arrested for attempting to murder his wife, beat her to death. This is the most mild-mannered guy. He’s under house arrest, pending. He hasn’t had his trial. So it’s just one of these weird—talk about weird things.

Jones: It’s a good thing you didn’t do other things.

Jones: Did you keep on some of the people from—

Fielding: Some of them.

Jones: How big is the staff?

Fielding: The staff then was twenty-something. It was smaller than the Clinton staff, but I actually had to add some people because I didn’t know what I was going to be facing with the oversight. It was smaller than Clinton but much larger than my Reagan staff had been, but I kept some of them. I’m trying to think if I kept any of the—there were a couple of them who had just been hired that I kept. There were some who wanted to do other things and I helped facilitate that and brought in two new deputies—the deputy and then the two senior guys. One was a litigating partner from Williams & Connolly; the other was the fellow who was supposed to be the new U.S. attorney for the Southern District of New York, which is *the* U.S. attorney’s office in the country. He was lined up to do that.

Then when the scandal broke about firing U.S. attorneys, that was put on hold. So I brought him over. He was a former prosecutor. We had a good, good team of people. Again, top-notch people. I was fortunate to be able to put it together.

Jones: How were they organized? Were they organized by the tasks, or was it who had the talent for whatever issue?

Fielding: Yes, the organization was very different from my Reagan organization. I inherited a different organization than I previously had there and the office had was little independent pockets of people and I didn’t like that. So we pooled everything so that there was a total coordination of anything that went out of the office. These people were used to dealing with certain areas, so I kept them there.

The clearance function I used to assign to people as kind of a good interesting break and they would get to meet the new Secretary of Commerce or whatever it was. That was a perk during my Reagan years. That function in Bush 43 was relegated to a separate office that did nothing but clearances. That made sense, I felt. There was a need to replace the head of that office, and I found the fellow who had run the Office of Government Ethics under Bush 41 and was very well

recognized. He was head of the Ethics Resource Center after that. He was an old guy. He was probably my age now and I brought him in to run that office. So we had instant credibility with the Office of Government Ethics and it made some good sense and he did a great job too. That perk wasn't available for everyone else, so they didn't get that.

Then I also put one of my lawyers with the National Security Advisor and put another of my lawyers with the head of the Homeland Security Advisor so that we had a foot in those camps and I knew what was happening in each. The Vice President at that time had his own legal staff, so I invited—

Jones: Putting means that that's where their desk was?

Fielding: Not necessarily. In one instance yes, but they were assigned, and the National Security Advisor would go to him instead of coming to me unless it was something that he thought was bigger than that guy.

Riley: And that was a departure from the practice you inherited?

Fielding: There was a fellow who had been the liaison on the National Security Advisor's staff, but it hadn't meshed right, so this was a replacement.

Riley: But there was a double-hatted person there; it just wasn't working.

Fielding: That's right.

Riley: Was that true also—you mentioned—

Fielding: No, with Homeland Security it wasn't true. So I guess that covers your question.

Perry: So what are the issues that are on your desk as you walk in, and what comes there in the first few months?

Riley: That is the question I was going to ask, but I'm going to preempt it because I thought of something that ought to come first. There was some awkwardness at the outset because they were talking to you and your predecessor hadn't been notified that she was going to be your predecessor.

Fielding: Yes.

Riley: Did you have a conversation with Miers? Was there a transitional series of discussions?

Fielding: She was told before I got there.

Riley: Sure.

Fielding: But obviously then I called and asked if we could meet. We met. She was trying to wrap up stuff.

Riley: Got you.

Fielding: There was a transition, but it was brief.

Riley: It was brief, and your conversations with her were perfunctory, or substantive?

Fielding: Oh, they were substantive, because I was asking her questions about both staffing issues and performance issues of people. Even before I got there I had each of the incumbents come and visit with me and then I interviewed each of them so I would have some sense of what I was going to be working with or how I wanted to shape it. But then she and I had some conversations, but not extensive, because she had stuff to do and I was thrown right into the pool too. There were a lot of briefings that I had to get about a lot of issues I was not up to speed on—

Riley: I bet.

Fielding: Including the whole terrorism thing and the whole Guantanamo and all the issues concomitant.

Riley: Now Barbara.

Perry: The issues.

Riley: What was on your plate?

Perry: And barreling down the pipe toward you.

Fielding: Whether to approve the naming of a rose for Laura Bush.

Perry: A thorny question. [*laughter*]

Fielding: Oh, there were always those kinds of questions. I'm using that as an example, but it's a real one. There are always those things coming in. We had to deal with the oversight threat. We had to deal with the national security issues. We had to deal with the war issues. We had to deal with the detainee issues, had to be briefed up about the—what did they call it—the interrogation techniques. There were just a lot of things going on and there was this other little issue brewing about the U.S. attorneys being fired. There were all kinds of sub-sub issues.

If you remember the former National Security Advisor was caught, in preparing for this; he was sticking classified documents in his socks and things like that. Then the Justice Department did not prosecute him—gave him a slap on the wrist and didn't prosecute him. There were enough people who wanted to know why that happened. I had to determine what the thought process was so I could report to those people who were concerned about it. There were just so many things it's hard for me to go back and open the book on one day and tell you what—

The other thing that happens is that in that job when you go into work every day you have no idea what you're going to be working on for most of the day. It changes, it shifts, and you have to be able to shift with it. The day will start out like many other administrations where you had senior staff meeting every morning. The Assistants to the President, which included the press secretary, me, and other people had different titles, but we were all Assistants to the President. It would start with that. The Chief of Staff would go around the table in the Roosevelt Room: who

was working on what and what were the issues of the day, and that sort of thing. Then the day just goes from there.

So I used to go in in the morning and I would try to be there by 6:30 in the morning because I never knew when he would call, if he'd call me or not. But a couple of times I had close calls and I almost missed it. So I decided—it was his practice, he would come in before the Chief of Staff. The Chief of Staff would meet him every morning at 7 o'clock. So then he started to come in a little early so he could do stuff by himself. But if he was thinking of something he had this phone on his desk and he just pressed one button and he had me. You saw that light go on and you knew who it was; it was the President calling. I got in the habit of going in early so we could go over anything he wanted to go over before his normal early day would start. But he started every day at a minimum at 7 o'clock.

Perry: How often did he phone you early in the morning?

Fielding: It varied. Sometimes very frequently, and other times—but enough to keep me going in at 6:30 in the morning.

Riley: Are you a morning person?

Fielding: No. Not until then.

Riley: What else looked and felt different about this White House than your experience before? There must be cultural differences even within parties about—

Fielding: Look, every President is different. Every President has his own management style. Every President deals with his Chief of Staff in different ways. Even Reagan, who had two Chiefs of Staff while I was there, he was different with each one of them. So you say, what's different about it? One of the funny things was of course when I first went into the Bush White House, all the other Assistants to the President within the first week or two said, "Is this the same as it was with Reagan?" They all wanted to know what the comparison was, which was kind of humorous, but everyone is different. The problems are different.

War powers was about as close as I had ever come before to the "law of war." We discussed it earlier, but "law of war" was not on my agenda in any other iteration and it certainly was here as Al had warned me that it would be, even though most of those decisions had been made before I got there. I don't know what else to tell you. Just think of a problem and there it is.

Jones: What you're describing is little or no control of your agenda, is that right?

Fielding: That's right. You had meetings set up and you tried very faithfully to keep those meetings intact, especially if they involved other people within the organization. Then there are other people who want to come in, they want a hearing on some issue, and you have to make a decision whether you want to or not meet with them. There are only so many hours in a day.

Jones: So you have in a sense a persistent agenda and that is those things that don't go away but layering in during the day there are things to be dealt with right away.

Fielding: Then the variety was the breadth of the constitutional powers of the President.

Jones: Was it ever possible to get proactive on something that you saw coming down the pike?

Fielding: Sure.

Jones: What would be an example?

Fielding: Let me think. We used to try and anticipate anything that we could. If you saw something happen you knew logically by experience what was going to happen, be it a flap-up in the EPA [Environmental Protection Agency] over something. The problem is it's not just the White House; it's all the constituent groups of the executive branch. I'm trying to think of an example; I'll think of something for you. One of the issues was trying to have the luxury to think ahead, to anticipate.

Jones: Continuing on the agenda, again I don't recall what was in the book, but in describing your work in the Reagan administration you said it is very important when a problem arises to deal with it immediately and solve it as quickly as possible.

Fielding: Right.

Jones: The sensible approach to anything, I suppose. On the other hand, you can't anticipate whether the problem will get resolved, even though you think you know how to deal with it. It frankly puzzles me how these firings came to be, also the whole [Valerie] Plame [Wilson] issue came to be, just as an ordinary observer, a person paying attention to politics, so huge, getting so much media attention, and certainly not going away quickly. So how do you deal with that? How did that happen?

Fielding: In both of those instances if it had been nipped in the beginning, before there was blood in the water, I don't think they would have been what they were.

Perry: By the White House Counsel's office?

Fielding: By everybody—the U.S. attorneys firing thing should have been stopped by the Justice Department, and by the White House to a certain extent. That thing was just breaking when I got there. I thought, *What is this? Why is this going on day after day? Why don't you give an explanation of why you did this instead of everybody acting like well, it just happened, just like Topsy it grew.* It was just not handled right in the beginning.

Now, I say there was blood in the water. It may have been because of the climate that it might not have been able to be handled properly. I think I know the interview you're talking about, but the plain and simple way I look at problems, if I have the luxury of doing so, is: You see the problem, if you can anticipate it, so much the better. If you can't anticipate it, as soon as you see it, think about what you're going to ultimately end up doing. Sometimes you have to look around a corner to figure out what you're going to ultimately end up doing and whatever it is, do it that afternoon. Don't wait for it to weave itself around. And if it has anything to do with the President, get it as far away from the White House as you can as quickly as you can.

Part of that, the looking around the corner part, is hard, and you've got to be right because sometimes you look at something and say, "That's not going anywhere," and it gets "legs," as they say, and all of a sudden it's romping. But for the most part you have to look at something and anticipate how bad it could be and then deal with it as quickly as you can. Do you waste your time because something never would have happened? I don't play those odds.

Riley: Let me ask you specifically in these instances. Would the kind of counsel work that you just described have prevented these two episodes from taking off and getting legs? You weren't there—

Fielding: I wasn't there. Let's separate the two, because the Plame thing is so wrapped up—I don't know that anybody could have anticipated how screwy it would get until—it was [Robert] Novak, I guess, who wrote an article that indicated some nexus, prior knowledge of who she was and then got Scooter [Irve Lewis] Libby wrapped around the axle in it. But on the U.S. attorneys firing thing, do you know that Bill Clinton, within the first X number of days when he went in, when he himself was under investigation by a U.S. attorney's office, fired every single U.S. Attorney? Was there a flap? He himself was under investigation at the time by U.S. attorneys, and he fired them all. Well, first of all he didn't have the press jumping on it and talking about how evil this was and how horrible and how justice is thrown out the window. But you also didn't have anybody really inquiring and you didn't have somebody say, "Oh, no, that's normal," and not reacting right away and hitting right back with it.

Yes, that's the prerogative of the President and he did it. Or "there were incompetence issues," there was this or that. It just kept spinning and spinning and the ball kept getting bigger and bigger. Then about the second week I was there, there was a piece of legislation that had to do with whether the President should veto or send a veto threat. It was something to do with the tenure of U.S. attorneys.

I remember they first raised it in a senior staff meeting. I said, "For God's sake, you've got this thing, don't send a veto message, embrace it quickly. Why add to the fire here? What's going on over at the Justice Department?" Yes, what's going on at the Justice Department? It was just out of control. And I was told that the White House didn't have anything to do with it, but there were memos, which we all know now from Harriet Miers and from her deputy who talked about the firings. They had knowledge that they were going to be fired. So what do you do about that?

The other problem I had was internal. When I first asked of people who were still there if there had ever been any dealings on this issue with what was now my office I was told no, and it wasn't accurate, so that had to be dealt with swiftly.

Jones: By the time you got it, though, it was not just a problem to be solved quickly. It was a—

Fielding: But there again there were calls for testimony of Justice Department people. They were coming up with these rationales. I said the real question is why did this happen, and get that out. Whatever the truth is, just get it out, get it over with. Sometimes it's hard to unravel. But it was a huge piece of cake to be handed to the opposition because it tied up the judiciary from both the House and the Senate with that issue and with the "Karl Rove/Harriet Miers" issues and then the executive privilege issue. It was bad, but in a weird, weird way, as far as what I was facing and anticipating facing, there were two things that happened.

One was that we recognized the subject, the issue of executive privilege; we staked out the ground right away. So all the other oversight people that were lining up to go come charging in, knew they weren't going to have a walk in the park. The other thing was it also diverted attention from other issues. Not that I wanted to have that be an issue, but since it was on the floor anyway it did divert attention away from other issues until I could try to patch them up, fix them up. It's funny to go back and think about it now. Golly.

Perry: Did you have to have any uncomfortable discussions with the President about this? I loved the quote that was in our briefing book that if you're White House Counsel you have to be able to go into the Oval Office and speak to the President and not have cotton in your mouth. Did you ever have cotton in your mouth when you had to go in and talk about this?

Fielding: I would have been of no value at all if I had. I had to find out what he knew. Pretty basic.

Riley: Sure.

Fielding: Of course, there again—and I don't blame him. He was just annoyed. I won't say he was angry, but he was annoyed that this thing had gotten where it was. It shouldn't have been; it was a silly thing. There were some other involvements that we found out about later that had nothing to do with the White House, that had to do with members of Congress who were trying to score political debts and stuff with some of these U.S. attorneys, directly with the department.

Riley: Right.

Fielding: But there were other things too I guess you could say experience could have prevented. One of them was that they had not had clear lines of demarcation between the Justice Department and the White House as to who in the White House could contact the Justice Department. So we fixed that at both ends right away, both at the Justice Department and the White House.

Perry: This was a problem with the emails going back and forth between the White House and the Justice Department?

Fielding: The problem was bigger than that. The problem was that people felt that they could pick up a phone and call their buddy over at the Justice Department and ask him a question about a particular matter. That's fine if you're asking about a policy issue, but it's not fine if you're asking about a piece of litigation or something like that. It has got to be channeled through, otherwise you have no control over it and you have no defense. Part of this is you have to have the defense of "this is the chain." For good or for ill no one would ever question if I called the Deputy Attorney General or the Attorney General and asked about a particular case. That would be accepted.

Riley: Sure.

Fielding: But if Karl Rove made the call, a different view.

Riley: So how do you fix that?

Fielding: Memos.

Riley: To everybody?

Fielding: Guidelines to everybody in the Justice Department and in the White House. It was easy. It was something that we had done before; I had done it in the Reagan administration.

Riley: But it had not been done in this White House so far as you knew?

Fielding: So far as I knew it had not been done; it was certainly not observed and it wasn't done at the Justice Department either.

Perry: Was that a sign in your mind of the inexperience in Washington of your two predecessors in the White House Counsel's office?

Fielding: Oh, I didn't even ascribe it to that. In hindsight, sure, that just shouldn't have been. It should have been taken care of.

Riley: Who polices that?

Fielding: Congress, the President.

Riley: Congress did, that's certainly true, but I'm wondering—

Jones: You mean as an organizational matter?

Riley: As an organizational matter, if you send out a memo saying you shouldn't have these kinds of contacts—

Fielding: And then you find that somebody has?

Riley: Yes, I guess. Or how do you go about, or who is the principal enforcer? Is it the Chief of Staff, or is it the Counsel's office?

Fielding: Counsel.

Riley: The counsel's office, OK.

Fielding: He goes and rats out whoever did it.

Riley: OK, got you.

Perry: Well, one thing that certainly had changed a lot from your previous service is email, the fact that there is email. So how did you deal with that?

Fielding: Fortunately, somebody had gotten to the President or he had decided on his own that he'd never use email, so that took care of that problem from his point of view. But it's horrendous, the volume—people will say stuff in emails they would never even think of writing. I don't know why it is, but it is. Then they changed over servers in the White House system

because they were very unhappy with the email system. They didn't lose emails like everyone said. They didn't lose them; they couldn't find them when they switched them. There was no destruction of emails; they were just somewhere and they couldn't find them, so they spent millions of dollars finding them.

Then there was an issue of the political people using their emails for political purposes, using the official emails, which again wasn't controlled and it just got sloppy and everybody got sloppy.

Riley: Then the issue of the official people using the political emails for official stuff, or at least that was the allegation that the RNC [Republican National Committee] accounts that were—

Fielding: They didn't use them for official stuff.

Riley: I thought that was the allegation.

Fielding: The allegation was that they were using official emails—

Riley: For party stuff.

Fielding: For political stuff.

Riley: But I also thought that there were concerns that, and I think this was related to Rove, as well, that there were concerns that a lot of communications that had official dimensions were being transferred to RNC accounts because it wasn't covered by the Presidential Records Act. Maybe I got that wrong.

Fielding: That was the charge, but I don't think that that was really the vice. I think the vice was that they were mixing them, they were intermingling them. But then they started to disappear. They couldn't find them. So they said, "Ah, they destroyed them."

Riley: That may have been where the overlap was.

Fielding: Yes.

Riley: Let me piggyback one question on this one, which is one that I've been puzzled by for years. That is whether, in your experience, the written record-keeping practices in this White House were more thorough than you might have expected when you came back. As an adjunct of our interviews on all of the subsequent administrations, the story has always been almost identical, and that is we learn very early on you don't put things in writing, which is why oral history is so important. At key meetings we don't develop memos; there are no minutes of meetings. And yet I've wondered, because evidently so many of the laws of political gravity were suspended with this administration because of the war effort, whether there wasn't a reversion to an old-style practice of keeping much more extensive records.

Fielding: I have no gauge on that one way or another. I'm trying to think of examples where—

Riley: Scooter Libby, for example, was victim to some of his own notes of conversations that he had with the Vice President. When that news came out I thought maybe this is a sign that there is

a more elaborate or a greater comfort level of being able to do this now than before. But you have no—

Fielding: I have no sense of that at all, but of course your premise is that people had stopped keeping notes and stuff like that. Some people do, but I think most people keep what they need. The real question is what is a Presidential record. That was a constant thorn, because is a draft of something a Presidential record? Theoretically it is. If you have a draft and you change one word in it, both of them are theoretically Presidential records. Then some day somebody at the Miller Center is going to have to go through 500 drafts of one document and see what the nuances are and then try and figure out who wrote what.

We used to keep things by categories. In my conversations with the archivists, the analogy that they gave me is that now that things are in email form a lot, it is the equivalent of having this big room with one mail slot and everything goes through the one mail slot and then just piles up and there is no way for somebody to come back and sort that this goes with this, this goes with that. If that's the case, historians are going to be very busy.

Riley: It's the needle in a haystack.

Fielding: I should disclose this on the record; my son is a budding archivist.

Riley: Yes?

Fielding: He's getting his second master's right now at North Carolina in library science. I guess it's the second one; the first one was in history. So he is fascinated by all this stuff.

Riley: The electronic stuff has just completely revolutionized—

Fielding: Yes, it really has.

Riley: But people were still being careful or were not being careful with—

Fielding: It depends on the person. Some people take notes; some people don't. Some people take notes and then they do a memo and they throw away their scratch notes. Is that technically—I think theoretically the scratch notes are a Presidential record. But there is the other—people with records get the memo, they go down and they tell Joe that that's the greatest idea, boy, that's really slick, and then they write on it, "This is the dumbest thing I've ever seen," and then they put that in the front. So they've got themselves covered both ways. [*laughter*]

Riley: But you didn't have any occasion—

Fielding: I never did that.

Riley: Of course not. But you didn't have any occasion to revisit the question of record-keeping when you came in. The patterns had already been established.

Fielding: Oh, yes, the patterns had been established. The only thing we did was send out memos advising of the Presidential Records Act. Also, almost like in a criminal case, when you send out

a notice don't destroy anything, even though I shouldn't have had to send notices like that, because theoretically you're not supposed to destroy anything. But they were gentle reminders I sent out to people. The Presidential Records Act precludes destruction of any documents.

Riley: Did you have occasion to make any preemptive visits to Capitol Hill when you first came on board?

Fielding: Yes, I did. A couple of the chairmen that I knew were going to be warming up for me.

Riley: Can you tell us about those conversations?

Fielding: They were cordial. In some instances they were remarkable in that people said it was the first time anybody approached them and talked to them about the committee work. In some instances—and I'm not going to name names—they were duplicitous. But nonetheless I did the effort and it did help. There had been a real "tough-guy" attitude toward the Hill, I sensed.

Jones: These were people you at least had some contact with; by now they're Democrats we're talking about.

Fielding: Yes, that's right. Of course I did also talk to the Republicans up there, told them what I needed. But there were some people, you know, it didn't matter. They didn't want to hear it. In a way, everybody said, "Watch out for Henry Waxman. Waxman is going to be your biggest—" I spent a lot of time with Waxman personally, not just sending up deputies and stuff. He never subpoenaed us and he had subpoena power. But there were some things—just to give you an idea of how your taxpayer dollars are spent.

Everybody remembers Corporal [Pat] Tillman, who died in friendly fire? Well, Waxman had a probe and he wanted all the documents from the White House, including the President's personal notes on a speech that he made at the Gridiron dinner a week after Tillman was killed in which he praised Tillman, his courage, and that of all other people who served and lost their lives. Waxman wanted to see every draft of that because he was convinced, according to what he said to me, that the President knew at the time it was friendly fire and didn't tell anybody. We spent so much time on this.

I finally just said, if you want to have an executive privilege fight over that, Mr. Chairman, go ahead, come at it. That was the end of it. That was just silly, silly, trying to do things like that. There is not indicia that the President knew anything about it.

Riley: What about judicial selection? Is it just a dead issue during the—

Fielding: No, we got some of them through.

Riley: Did you expect that to be a big piece of your portfolio when you came in?

Fielding: It always is with the Counsel's office. It always is. The judicial selection—I probably told you this in the Reagan interview, but judicial selection up until the Reagan administration was handled almost exclusively by the Justice Department. Then President Reagan felt that he had been burned by some of his judicial appointments, so he wanted to bring it into the White

House. Since then, you had the model that you now have. It's primarily run out of the White House rather than the Justice Department.

Riley: And the transitional time frame would have been about what year? You say he felt like he had been burned.

Fielding: It was '81. He was burned when he was Governor.

Riley: Oh, as Governor. I'm sorry.

Fielding: No, I probably didn't say that. But that has always been a big part—the frustrating thing about judicial selection is what they're facing right now. It's like warring villages in Bulgaria. “You killed my great-grandfather and therefore I'm going to kill you—” Then it just goes on and on forever. That's a shame, because that's an area where you shouldn't be screwing around with numbers. If you don't like somebody's philosophy and it's aberrational philosophy, fine, then do what you have to do, but don't just do it because it's a Republican nominating the person or it's a Democrat nominating the person. Both sides are guilty of it at this point.

We tried. I brokered a deal with I guess it was the Sixth Circuit from Michigan, had been deadlocked for—I forget—nine years. So I brokered a deal that gave this Senator one that he wanted that was acceptable to us, but not—and then he was supposed to honor—I figured that this might be a good example and it wasn't; it didn't work with others. It didn't catch on.

Riley: It worked in that instance, but it wasn't—

Fielding: Only in that instance, that's right. We broke some china over it too—it was Senator [Carl] Levin. He was one of the people I went up and saw preemptively because I knew he was on the Senate—

Perry: Foreign Relations?

Fielding: Yes, I guess it was the Senate Foreign Relations, with DoD. No, Armed Services. I knew I was going to have issues with him over that because he was looking for documents all the time. But in this case there had been a woman who was nominated in the prior Democrat administration and the Republican administration—I guess it was Bush who rejected her, didn't take her forward. So I went up and I first approached him about, “Let's take her.” It was a number of years later. We thought we had a deal. So we had the deal that he would get one and I would get—I don't mean I would get—the Republicans would then get two district courts moved. Then we would go back to the next open vacancy on the circuit that was a Michigan vacancy. That would be the President's pick with the one little deviation. It was nine years that nothing had happened on that circuit. He agreed to that and the woman died. So it was back to the drawing board.

Jones: The loss of a pawn.

Fielding: So there was another woman judge who was a sitting judge, last name was Levin. He suggested her. We interviewed her and she was perfectly fine. It was just that her last name was Levin. She had married Senator Levin's brother. They had gotten divorced but she was still a

Levin. So we endorsed her. The Democrats almost blocked her. She is going to be a good judge, I know, or I wouldn't have recommended her.

Jones: Is this his brother in the House, Sandy [Sander] Levin?

Fielding: No, it was another brother. She was an unwed mother. This was really an interesting deal, but if the other woman hadn't died.

Riley: What about the higher court? My assumption is that there must always be preparations underway—

Fielding: For the Supreme Court?

Riley: In the event of a Supreme Court vacancy.

Fielding: Oh, yes, you always have a list. It was over by the time I got there. Now you're harking back. You asked me a question or somebody asked me a question earlier whether I had had any contact during that period of time before I was asked with the White House about any other issues. I did weigh in on the Supreme Court, the two instances. Obviously I had two candidates that I was very fond of because both of them had worked for me.

Riley: Sure.

Perry: So this was for Justice [Sandra Day] O'Connor's position—

Fielding: And [William] Rehnquist.

Perry: Rehnquist of course passed away after her announced retirement. How did you decide between the two of your former employees?

Fielding: Well, it's better than asking me which one I was pushing over the other one, because I'm not going to answer that. Somehow each of them will find out. Both of them are so able I would have loved to have seen them both go on. I pushed them both. But that was at a time when I thought that there would be two vacancies. It was not that Roberts would move up, or if he would move over, there would be another one. So I was able to urge both of them. But [Samuel] Alito came in.

In the book, I don't know if it's the President's book or somebody's, maybe it's *The Turning Point*; did they talk about it there? Yes, that's where it is. There is something about the selection process, but I was not part of it at all except for giving my two cents about the two of them.

Riley: You said that there was no revisiting of the Supreme Court list by the time you got there?

Fielding: No, no. I had my own list in case somebody dropped dead. No, what I meant was it didn't happen.

Riley: It didn't happen, exactly, but I guess my question was more along the lines of how often do you have to pull the list out and refresh it? Was there an existing list that you came to inherit

when you came in that you felt needed to be revisited based on things that had happened or based on your own—

Fielding: Gosh, I don't remember if there was an existing list, because they had hashed it over pretty extensively. If there was a list, it was in Jane Mayer's book about the Supreme Court selection. No one knew who was on their list. No, I just made up my own list and didn't revisit it. Nothing happened to make it—

Riley: Are you OK to go another 10 or 15 minutes? It has been a long day.

Fielding: Yes, it has been a long day, but that's fine if it's OK with you.

Riley: OK, we'll do that and then we'll break and pick up again in the morning.

Fielding: Good.

Riley: What about the movement of Alberto Gonzales from the Justice Department? Did you have a role in that, or in the selection of his replacement?

Fielding: Yes and yes. I mean, I must say Al Gonzales and I were friends and still are and I had really gotten to like him during the transition and subsequently. I got an award one time and he came and attended, which made the papers. We had a nice relationship and I'm very fond of him. I know that he was not well served at the Justice Department. He got caught in the vortex and he couldn't get himself out of it. One day when he went up there he just got creamed in the Senate or the House Judiciary Committee hearing with people yelling at him, his memory, and all this stuff. First of all he has a bad memory. All kidding aside, he has a bad memory and acknowledges that. But I remember the day he was going to go up there.

Everybody was saying, "This is going to be the seminal moment. This is the time when Gonzales can make it." He called me and said, "Do you have any plans for lunch?" I said no. He said, "How about we have a sandwich at your desk?"

I had a table, he came up, we just had a sandwich. Calm as a cucumber. Talked for about an hour, an hour and a half. I'm thinking, *This guy should be prepping*. He went up there and just got clobbered. But he didn't seem to have the sense that he was going to get clobbered, even though I shared with him what I thought was going to happen.

Riley: Care for some more mayonnaise?

Fielding: He is a really nice man, but there came a time when I had to—I was asked by the President what I viewed was the inevitable down the road and around the corner on it. Then I was very involved in finding the replacement.

Riley: What were you looking for in a successor?

Fielding: I don't mean to sound glib, but I was looking for exactly what I found, which was [Michael B.] Mukasey. Good reputation, tough, straight, knew himself, confident of himself. Did not know government, but the only flaw was whether he would be a decent administrator, would

he surround himself with really good people in a department that was having trouble. People were not exactly flocking there at the time.

Jones: And closing down.

Fielding: Yes, But Mukasey, I think he was really very happy with him. He's very short of stature. I don't know if you've ever seen him; he's very short. I suggested that he meet with the Chief of Staff and a couple of the other assistants to the President before he meets with the President. And I'm getting all these snide [Henri de] "Toulouse-Lautrec" comments. But when people talk to him, he's intense, a terrific guy, a very good lawyer, and very smart. Not politically smart and in a way a little naïve politically for running a department that's beleaguered. But nonetheless he had the integrity, he had the gravitas, which was what we needed.

Jones: Had you known him before?

Fielding: No, I got on to him by some of my lawyers who had come out of the Southern District who said this guy was really good; he's tough. He had done one of the major terrorist trials. He'd been under protection for seven years after that trial, day in and day out.

Jones: Just the impression he gave was of the kind of self-confidence that Gonzales appeared to lack.

Fielding: That's a fair comment. Unfortunately, like many people—we were talking about Dan Quayle earlier—once you really hit hard, sometimes people just can't bounce back. But he just clearly didn't have self-confidence by the time it was over. As I say, the nicest man in the world, but—and he was not well served, in some instances by his staff.

To give you an example, the first time I contacted the AG's [Attorney General's] office in my official role, I called up the Justice Department and I said, "I'd like you to come over and bring the head of the criminal division, because I really need to discuss something with you." Gonzales came over, brought his chief of staff, and head of the criminal division. We discussed the subject. I asked him questions. I told this to Al—I really did him a disservice because I didn't call him up afterward, privately. But in that meeting, every time I asked him a question, his chief of staff answered the question and he let him do it. That's the same guy that was orchestrating this firing of the U.S. attorneys, marshaling all these hard-right groups of people. It's the same camp. I really did Al a disservice, because I should have called him and said, "Do you realize what just happened?" He seemed oblivious to the fact. Is this the kind of stuff we should be talking about?

Riley: Absolutely, yes.

Fielding: Not very historical.

Riley: It actually is, because when you're trying to get a reading on the personalities that are filling these major roles, unless the documents themselves are completely illuminating, the best that people are going to have to rely on are contemporaneous press accounts and a few mentions in memoirs. So what we're hoping to do is to develop a composite set of character sketches of individuals, and this is a very important piece of the puzzle.

Fielding: But I guess in a way isn't it like three blind men describing an elephant? Wherever you touch is whatever you describe.

Riley: I have a more elegant metaphor, which is it is a mosaic.

Fielding: That is much more elegant.

Jones: Particularly because I don't know what it means.

Fielding: I don't know what *you* mean. [*laughter*]

Riley: So I'll shut up, and Chuck, proceed with your question.

Jones: What I draw from that description that you just gave and some others is the significance of truly understanding the role that you're in, what the position is, and how you fit into it, understanding that. But that would apply also—back up from that to say that it is not only the responsibility of someone appointed to a significant position of that sort, the Attorney General, but also backup to the person who has appointed someone to that position or the process of appointment to that position, whoever made the ultimate position. If you don't get that right, again, using the Quayle example, he was chosen for a position which in my judgment he didn't understand that well, and that's sort of crucial.

Fielding: I'm not sure; I think he was a little premature. By the same token, I just think he never got his stride, just didn't get in until the end and he really did then, but by that time he was painted, he was a caricature of himself.

Riley: This is Chuck's point. It wasn't just the fact that he was chosen for the position, but it was the way he was chosen for the position.

Fielding: Sorry, I missed that.

Riley: The President played it very close to his vest and then put him in a position to get knocked off his stride, from which he never recovered.

Fielding: I see what you're saying. To take it to the next step, as far as the selection of Gonzales goes, I don't know what happened there. I wasn't there. But the thing I thought that Gonzales was going to be picked for was the Supreme Court, because it was rumored, and he and I had some discussions about it. I had my own personal views about it.

Riley: This was before you came back in the government?

Fielding: Oh, yes.

Jones: As one would say, it "made the papers" at that time. There was media coverage; there was a discussion in the media.

Fielding: Rumors that he might be on the court?

Perry: In the public he was on the short list for a long time.

Fielding: Yes, but I have no idea how suddenly he ended up at the Justice Department or who the contenders were or what.

Riley: Can I ask you—Did he express to you anxiety about whether that might happen?

Fielding: Anxiety about what?

Riley: Anxiety about a Supreme Court appointment? I guess I'm trying to get a sense of the tone of your discussions about—

Fielding: No, he just discussed the possibilities of it and not necessarily his uncertainty as to whether he wanted it or not, but his uncertainty as to whether his friend was really considering him or not.

Riley: OK, fair enough. You've been a good sport. I think we ought to let you finish your Diet Coke and let you have a restful evening before we come back tomorrow and dig back into these things for a couple more hours. Thank you.

To the question about relevance, this is exactly what we hope to get out of the interviews. It's partly your own experience, but having these observations about your own role as well as your observations about others is just absolutely indispensable. My own metaphor about the mosaic I use with everybody in that I say we try to get the best portraiture we can from each individual we talk with, but we don't expect that any one person has a monopoly on wisdom about what was going on in this White House. We want people to use all of these records.

Fielding: What I was pondering—it's one thing to ask me what I did as opposed to the value of my observations of other people. I don't think you're asking me to rat out people or do this or that. Don't misunderstand me.

Riley: That's because you wouldn't answer the question if we did; the temptation is there to ask. I will say that interviewing lawyers is always a different kind of proposition for us because you folks are trained differently. The attorney-client privilege is always at issue when we're interviewing lawyers, so the interviews proceed in a slightly different way.

Fielding: Besides, I've had the awful experience of taking depositions and cross-examining lawyers. They're a mean bunch.

Riley: We're not exactly in the same boat, but there is a flavor of it anyway. But you've been a good sport and very accommodating. We appreciate it and we look forward to coming back tomorrow.

March 9, 2011

Riley: All right. We're back with the interview with Fred Fielding.

Fielding: You want the mea culpa again?

Riley: No, no, no. It's not your mea culpa. It's routinely the way we start the second day, by asking, "Were there things—"

Fielding: Is that right?

Riley: It's very common for people overnight to reflect back on the previous day's discussions and recognize that there were some things that maybe you would like to talk about, and so let me open it that way. Were there some things that you wanted to go back to?

Fielding: Well, yes, there are a couple of things that I recall that need clarification.

Riley: OK.

Fielding: Or I think at least addition. And the other thing was it was a trip down memory lane for me because I was half asleep and I'd be thinking of this and that and the other thing and so obviously, I hope it comes out in the conversation. If not, at five minutes before we quit I'm going to give you a whole list of things we should go over. [*laughter*]

But I was reflecting back primarily on the 9/11 Commission, for instance. I meant to mention to you, and I assume you know this, that Slade Gorton is on your board.

Riley: Yes.

Fielding: Oh, OK, because he would be wonderful.

Riley: Yes. He told me he thinks he should be interviewed.

Fielding: Well, I'm sure he did, [*laughter*] and he should be.

Riley: That's what I told him.

Fielding: And the other thing is I mused over the comment you said about was it staff-driven or not? And I guess I really don't understand what you mean by staff-driven. Because I didn't mean to say the staff didn't do any of the writing or anything like that, because they did so much of the investigation and so much of the synthesizing of the information. They really, really did. So I didn't mean to come over and say—I was talking really about the writing of it.

Jones: That came through.

Fielding: OK.

Riley: It did. The basis for the question is that there are commissions that are not really hard-working commissions. The impression that I get from before, that you reemphasize, was that no, this was actually a commission where people were wholly invested.

Fielding: Yes. That's true. They were invested, and as we discussed yesterday, after a period of tilting back and forth, everybody realized it was time to hone in and get the job done and it really

was a collegial effort at the end. I won't say it was all the way through, but it certainly was at the end.

The other thing I ought to note for history, just because I don't know that anybody ever is going to say anything about this, they originally started to take minutes of the commission hearings, the private sessions. Then they would give you a transcript of the draft of the thing. And after a while, everybody stopped reading it because what was happening was these minutes, which have been sought and never yet released to the best of my knowledge, but after we'd get the copy of it and people would talk about some major things, then certain commissioners would go to the scrivener and make changes.

So in essence the minutes will not be really the minutes. They will be the minutes as envisioned by certain people. So if it ever comes out I want somebody to know and recall that that's really what the case was. After a while, most people just ignored the minutes.

Jones: Your description I thought was excellent of the staff and the relationship with the commissioners along with the flow of how it went. Hearings to the research done and then to the writing. And remember we asked about the turning point, where the commissioners came together, and overlaying the whole thing was an increasing understanding of the purpose, and so it seemed to me your description provided people in the future with an understanding of how weighty the mission was and that tended to be realized—

Fielding: OK, good.

Jones: Is that a decent summary? That's certainly what came through.

Fielding: I'm glad that's what came through because that happens to have the virtue of being accurate. So, good.

OK, the other thing is, whoever did the research on me, and I know no one will own up to it until they hear the end of this—

Riley: The name of the researcher is on the cover of the book.

Fielding: No, I saw it. He missed one of the most important tasks. There was an article about it and he missed it.

Riley: All right.

Fielding: Every year at the Easter egg roll, there is an Easter bunny. And I'm not saying anything. You have to research it, but I think he missed something.

Jones: We are sitting here with the bunny?

Fielding: You know, you could be. *[laughter]*

Perry: Can we call you Harvey?

Fielding: That's so funny. The President had no idea. And before—

Riley: This is which President had no idea?

Fielding: Bush 43. First of all, you see the bunny outfits, their big heads, and I want to tell you something. Don't ever get in one of those things. They stink so badly. People have worn them.

But anyway, so we're in the Red Room and they're going to go out onto the balcony with Mrs. Bush, Laura Bush, and mother [Barbara] Bush and the kids and everything, but beforehand they come walking in, and there is Mr. and Mrs. Bunny standing there. Mrs. Bunny was one of my associates. But we walk in and Laura Bush said, "Oh, look. Mr. and Mrs. Bunny, do we know who they are?" And the President walks up and says, "No, but I think I'm going to find out." And he is staring in my eyes. Of course, my eyes are not my eyes. My eyes are down here. He's looking up here. And I say, "Boss, I'm ducking a subpoena."

He started laughing. Then we went out on the balcony, and of course I'm doing the little bunny wave, because nobody knows who the hell you are, you can do anything. And then one of the daughters comes out and she sits there and I see the President lean over to her and look over and then she looks over and goes like this. The two of them are just laughing. Everything is serious up front. Mama Bush is making a speech and these two are laughing and waving at me. We had so much fun, but Al Kamen, *In the Loop*, got onto it.

Riley: He outed you?

Fielding: He said, "He's no dumb bunny."

Riley: Well, I'll have to get onto our research staff.

Fielding: I think we ought to clean this up.

Perry: But here's the important question. Did you volunteer for the job or were you handpicked?

Fielding: I volunteered. I suggested that this would be a lot of fun.

There was one other thing that I wanted to clear up for you all. Let's see if I can find it. Oh, yes, you really made me realize a couple of things. You had asked the question of whether I was involved in the campaigns themselves and I said I had really never been involved in a campaign, but in a way that's not accurate in the following regard, and that was Bush 41. I was helping out Quayle, not only during the transition, but I recall that at some point Bob Kimmitt, who had been the vetter for Quayle, had asked me, "Can you help me out? We're trying to figure out how to dispel this myth that Quayle is just this rich kid."

Of course there is pressure to give out the Internal Revenue Service documents and your returns. So I said, "Why don't we do this, let's be prepared to say what his wealth is, what the value of his family assets are, and turn over his documents." And so I hired a CPA [certified public accountant], very reputable group, and they went in and certified his assets. What it really was, you know, not the [Eugene C.] Pulliam family money and all this kind of stuff, and then we had the presentation and they said his net worth is such-and-such. And people were saying, "What?"

No. Don't believe us. Trooped out the CPAs and that was the end of the issue for the campaign because it just put it where it should have been.

I also did recall last night that right after he was elected, he had my wife and me come out for dinner. We spent a whole evening together talking about what he was planning to do before any transition had really started to take place.

Jones: This is after the election or after the—

Fielding: After the election. But he had not moved in; he had not been sworn in or anything like that.

Riley: Right, but you're talking about the Quayles?

Fielding: Quayles. That's right. I'm talking about the Quayles.

Riley: In '88.

Fielding: And also during that period of time I did discuss with him—with Dan Quayle, John Sununu, who was Chief of Staff at the time, and also with President Bush 41, a personnel issue in which I was representing somebody. I also met with Quayle after he was Vice President when he went out on the tort reform issues. I went to Chicago with him and worked on a speech and helped brief him up because he was meeting with all the plaintiffs' lawyers in the ABA [American Bar Association]. He just walked right into the lion's den and defused them. He really did a good job. So I did that.

And then on Bush 43, since I said I really didn't do much before I was asked to go in, I have recalled there were other things involved. I did meet with Gonzales at his request to discuss a personnel issue he was grappling with. I dealt with the White House fairly often because I ended up representing people who were newly coming into the White House after the first onslaught, like Carlos Gutierrez and some people who came in there and a lot of potential Ambassadorial appointments. So I had a lot of dealings with them in that regard.

Actually, when I went into the Bush 43 White House, it wasn't a total bunch of strangers. It was either people I had cleared initially or people that I had worked with and represented. I also had a meeting one time after the inaugural and I went to talk with the Vice President to advise him that there was somebody that I had vetted and was a non-PAS [Presidential appointment with Senate confirmation], which means not confirmed by the Senate, but had been rumored might be promoted. And before that got out I wanted the Vice President to know that there was something and that they shouldn't let the rumor of the name float too far because there was a very serious problem with this person. Never could have gotten through Senate confirmation. Even though it wasn't disqualifying, it just would have been meat to the lions. So I met with the Vice President and alerted him to that.

I went to two meetings that Al Gonzales or his office had set up. One was a meeting of a lot of lawyers around town that had been in the government in legal slots and I don't remember the subject, or I've got the subjects mixed up. The second meeting they had some people from the Justice Department and from Gonzales's or Counsel's office there to talk to that small group

about the problems they were having with judicial selection and getting nominations moved forward.

There were those two additional meetings. I just forgot about them when we were talking. I feel now like I'm confessing to the prosecutor that I didn't tell you all of the story yesterday.
[laughter]

Riley: It's not a legal proceeding.

Fielding: I know, but it's still—

Riley: Old habits die hard.

Fielding: Yes. And I also testified before Congress on the D.C. Circuit vacancy. I forget what the subtext of it was, but it really was the Miguel Estrada issue, and there was some challenge to how—I think it was that [Charles] Schumer and this new Senator Obama were taking the position that there should be evenly split political, philosophical membership on the D.C. Circuit, which was silly. So I testified there at their behest.

Although it didn't have anything to do with them, they certainly had my name in front of them, because I was also, for the first couple of years, on the ABA Standing Committee on Judiciary and did the screening for some of the federal judges in the early part of the administration. So obviously in that regard they knew I was alive.

Riley: Barbara, do you have anything you want to ask about that?

Perry: Well, could you elaborate on the Estrada issue? Because I think that's something that people will look back on.

Fielding: On the testimony?

Perry: Yes.

Fielding: I'll have to get your testimony because I don't remember what the particular issue was. But it really was a subterfuge for attacking the Estrada nomination.

Perry: Right.

Riley: Is there anything on the ABA stuff? Is that fairly well plowed territory?

Fielding: Well, the ABA stuff, I stayed away from the White House on it, except they knew I was on the committee. And actually, I was the vetter for the D.C. Circuit. The ABA system is that they select one member from that circuit and they do the nominee and then it's circulated—the report, a pretty voluminous, 50-60 page report you prepare and you interview 50, 75 people.

Perry: Do I remember correctly, though, that President Bush 43 said that he was not going to take the recommendations pro or con into consideration?

Fielding: Right. That's a point I forgot about. That's another good point we should discuss in a second. But on Estrada on the circuit we had voted a unanimous well-qualified rating, which kind of got lost in the politics.

But to get to your point so I don't forget it. I was on the committee at the time, and during the transition I talked to Al Gonzales about the ABA, and he said, "We're going to issue something saying we're not to give them—which is the most important thing—advance notice of who it is so that they can say yea or nay before we make the nomination. We're just going to ignore them." And I said, "I think you're making a big mistake."

He said, "Why?" And I told him. And I went to the Chief of Staff and told him that I thought this should be revisited. The answer both of them finally gave me was the decision was made during the campaign. That was part of a campaign issue. "We're not going to be bound by—" So I think it was a mistake. I thought it was a mistake then. I tried to clean it up before I left at the end of this term and certainly talked to my successor about it, because for all the problems with the ABA, as long as it's balanced. (I went on the committee with the condition that if it was as political as I was afraid it might be and if it's as political as it was during the Reagan years, I would resign and I wouldn't be big and loud about it. If anybody asked me why I resigned I would say. And everybody said OK, but I went on and I stayed on it for two terms. And, you know, it wasn't perfect, but it wasn't broken, either.)

The advantage is you sometimes get a bad egg and you don't know it and the ABA can screen it out for you if they are doing their job correctly. So I disagreed with the policy, but as I say, the decision had been made during the campaign. They were going to stick with it whether it was smart or not. Anyway.

Let's see. And also, I was the mediator trying to mediate between the U.S. government and a Jewish group representing Holocaust victims out of Hungary on something they called the Gold Train Case. I don't know if you've ever heard of the Gold Train Case. Do you know the case?

Riley: I lived a couple of years in Salzburg.

Fielding: Oh, well, OK. We were successful in mediating the Gold Train Case.

Jones: Why don't you say what it is?

Fielding: Oh, well, if you don't know the Gold Train Case—The Germans, of course, took all the wealth of the Jewry in the country, and when they sensed that the Allies and the Russians, in particular, were closing in on them, they decided to take the booty and make it to Germany. They loaded it all on a train. Hence the name, Gold Train.

They started across and they finally realized that they were not going to be successful in getting there fast enough so they surrendered the train to the U.S. Army. The army inventoried everything that was identifiable. Most of the stuff was fungible, but anything that was identifiable—and they used some of it for command headquarters flatware and stuff like that, but everything was inventoried. There was some pilfering that took place. Some people were prosecuted for stealing, but in the end they didn't know what to do so they sold it off at auction and gave the funds to a UN [United Nations] group instead of giving it back to the Hungarian

government that was demanding it at the time, because there was no sense that the communist government would distribute it in any way.

This group was the survivors of those victims that were there and thought their family stuff was on the train. It was so mushy as to proof, but by the same token, it was a group of people and they were dying off pretty regularly. The case was in south Florida in litigation and it was coming up a year before the election but the government figured they'd better—if they were going to mediate, and they failed, and then the court stepped in and said, "I want it mediated," nothing to do with elections or anything like that. And so we were able to—it was very interesting. It was fun, actually challenging.

We got close to a figure and all of a sudden it just bogged down. So I guess I did something that was a little extrajudicial because I went and I found a gentleman who was the dean of the Jewish settlement cases. He's a very well regarded rabbi up in New York. I brought him into the meetings and then let him alone with the plaintiffs' lawyers and I just walked out of the room. We solved the problem because the problem was that the plaintiffs' lawyers weren't getting enough out of it. So that solved the problem. Anyway, that's a long story, but that was prior to this.

Jones: I think it's worth the record—

Fielding: Of course. When Gonzales was Attorney General, after he was over there as Attorney General, he invited me over there one day. We had a private lunch and discussed some stuff that was on his mind. Not that I had a specific task. He wanted to discuss things.

Then after it was announced that I was going to be appointed to go back in, he invited me to come over. I looked forward to it because I was going to have to work very closely and wanted to set up lines of communication with him. That's when I found out that they didn't have the right memos saying who could contact who. But during that conversation at one point he suggested that maybe the judicial selection should go back to the Justice Department and out of the White House. And I said, "Did you feel that way when you were in the White House?"
[laughter]

He said, "No, but we were kicking around with my chief of staff and we thought maybe this would be a good time to do this or a good time to try it." And I said, "No, I don't think so, Al." That was it.

Riley: That was the end of it.

Fielding: Yes.

Perry: His chief of staff was Kyle Sampson.

Fielding: The same one who was in the meeting that answered all those questions for me. Yes. So there you are.

Riley: Well, I'm particularly glad we got that last—any questions about any of these things? All right.

We talked a little bit afterward yesterday about some things to cover, and here's how I'd like to start. You are maybe the best source that we could have to talk about executive privilege, and we talked a little bit about it yesterday, but there are two ways to approach the question. One is just a very general opening to you to discuss the general subject of executive privilege as you've seen it evolve from the Nixon administration until your most recent experience. An opportunity to reflect on that window of time, how the privilege has changed or not changed, the relevance of it to Presidential power, and so forth.

Jones: And what is pretty much settled and accepted and what's still kind of a gray area.

Riley: Right. And then the more specific way is just to get you to tell us your own account of how, particularly with respect to the U.S. attorney situation, that gets presented to you when you take the position, when you come back into the White House and your own thought process and the process within the White House as you're trying to figure out how you're going to deal with the Hill and your dealings with the Hill on the question of privilege. And how you ultimately resolve the dispute with the Hill over testimony. So whichever way you prefer to deal with it. We'd be interested in—

Fielding: Are there other topics? The reason I'm saying, of course you know, the Miller Center was considering doing something strictly on—

Riley: Yes, I'm aware that there is an idea for a commission. I think I've got that right.

Fielding: There was an idea. I'm afraid I was a little negative about a commission. I think a report or study would be interesting but I don't know about a commission. Commissions usually try to come up with answers and solutions. I don't think a commission is going to solve the executive privilege issues is what I'm saying. The reason I ask, twofold, is that if there are other matters, this subject in the broadest sense could take quite a while.

Riley: All morning? OK.

Fielding: And although I'd be happy to start wading in on it, if there are other things that we should cover because that's a discreet package—

Riley: Well, there are other specifics that I'm sure each of us has. Let me look at my—

Fielding: I'll do it either way. I'm just suggesting—

Riley: Chuck, what do you think?

Jones: Well, rather than getting too deep in the weeds on the concept itself, apart from cases of it, probably your involvement with a specific case would be a better way to treat it, just to see how the issues were managed.

Riley: So take the narrower approach on 43 I guess, because you must have discussed some of this—

Fielding: Let me do this. I had my staff right at the end prepare a paper on our dealing with executive privilege. I had forgotten about that, and that might be a good starting point for us because what I really told him was I want you to prepare something so that if the President wants this as part of a book or he wants this just so he knows it, we should record the steps we took and what we were trying to do. But it didn't go to the President. It's not a document that I shouldn't show you, because it went to the President.

Riley: All right.

Fielding: That might be very helpful.

Riley: You have a copy of that.

Fielding: I have it in my office, yes. [Ed. note: The paper was later published by the University of Virginia.]

Riley: By all means. That may be a way to short circuit a lot of this.

Fielding: But to just put an overview and an understanding of what we're dealing with—coming into the Bush administration there was a feeling that there had been an abrogation, a diminution of executive power. Now, historically this happens. As everyone here knows it ebbs and flows back and forth depending on the power and which end of Pennsylvania Avenue happens to have the biggest muscle at the time or the biggest problems at the time. The power shifts.

But there had been a real feeling that, especially in the last couple years of the Clinton administration, they had given away the store to make peace. This was in part due to events, not Monica Lewinsky necessarily, but other events as well.

But when you'll see reports that I go up and Waxman and his people release this list of 37 instances where White House people have testified or something like that, it all came out of that era where Clinton even let his counsel to the President testify, to go up on something he discussed with the President.

Was it critical for that issue? No. But was it critical for the power? Yes. And so there was a lot of discussion, including discussion among myself and Al Gonzales and Tim Flanigan during the transition of this particular issue that would be facing them generically, having nothing about U.S. attorneys or anything. It really was, and a lot of it came out to the Marc Rich pardon and it was—well, I had the list. I'd get hit in the face with it every time I'd go up and say, "Well, it's executive privilege." They would say, "This is what happens historically." And I'd say, "It's not historical. It's aberrational."

So they start out with the mindset like that. I'm not playing junior psychologist, but I guess I am. There was also, after 9/11, a tendency even more so and there was pressure to bring more power into the executive branch. Congress doesn't have the ability to react fast enough. The President has to have his powers.

So I think it was leading up to that and then there was so much acrimony as we touched on yesterday that once the control of the House shifted and Waxman openly announces war, jihad if

you will, on the White House, then by that time executive privilege is really going to become the issue. It's focused. It's forced.

That's your overview, as I saw it, going into this administration, and as I discussed with the President when we were discussing whether we liked each other or not. I think if I can give you that paper—

Riley: Good. Absolutely.

Fielding: That might be a good start and we can go back at a subsequent time or by phone or however you want to do this. I don't mind coming back, as long as it's not for a day and a half again. Because for instance, there was a period of time, and I'll get in my mind right, when in the Reagan administration I issued specifics of when and how executive privilege could be exercised. I reissued it when I went in the last two years of Bush 43 because what happens when a new administration comes in and there is this murmur of executive privilege, this mumbo jumbo, some department or agency is asked for something, they don't ask the White House what they should do. They say, "No, executive privilege." But they don't have the ability to exercise executive privilege. The President has to exercise executive privilege and so you had to remind people of that.

Riley: There was no difference in the document or the sets of guidelines that you were using with Reagan and what you used later? There had been no change or enhancement?

Fielding: No. They just hadn't been announced. So if we can do that I'd be happy to share that with you, and that has chapter and verse because even this summary here leaves off in the beginning of '08. All the court fights and everything were in '08 and there is nothing in your timeline summary about them. But this will cover that.

Riley: OK, great. Anything you want to plow into?

Fielding: Yes. If there is anything in particular right now we can do it. I think that would be the best comprehensive way to do it unless you have specific—

Jones: Well, specifically with the attorneys, I don't know how to get at it exactly—when you arrive, you arrive with that issue, if not midstream, certainly coming on down. How, given the background and what hadn't been done and so forth—let me ask it this way. Yesterday you said, when we probed about the business of tackling a problem right off and getting at it and that wasn't done—how would you have done it had you been the counsel when this was first developing?

Fielding: You mean the U.S. attorneys?

Jones: The U.S. attorneys.

Fielding: I would have figured out what the story really was, who was involved, what really happened, and I would have gotten it out right away.

Riley: Can we move back in the timeline I guess and ask you a question about the actual activity with the U.S. attorneys? Would you have made a recommendation on releasing them at that time? I guess there's a question about what's the proper—

Fielding: Oh, no. That's a Justice Department recommendation, I would think. I don't think it should have come out of the White House unless there was a reason for it. For instance, theoretically, President Clinton had a reason for firing other than the obvious one, but there at least had to be something, and whatever is done should be done with transparency—that's what I'm really saying.

Riley: OK.

Fielding: And that's the key. Because once you look like you're hiding something and somebody wants to say you're hiding something, whether you really are or not, you're halfway down the hill.

Jones: Yes, because that's where the requests for information start to come.

Fielding: Right, and that's where the missed answers, the answers that don't jibe up start to go, and then, "Aha, somebody's lying. Cover up. Cover up. Cover up." There you go. It doesn't take much if you have a hostile audience to trigger that.

Perry: Could I ask about the Clinton situation? I found some statistics. One says in 1981, Reagan's first year in office, 71 of 93 districts had new U.S. attorneys. In 1993, Clinton's first year, 80 of 93 districts had new U.S. attorneys. Then it says, in contrast to the 2006 dismissals, Presidents rarely dismiss U.S. attorneys they appoint. And then it quoted from one of Kyle Sampson's emails to Harriet Miers, and it said, "In recent memory," again this is quoting Sampson, "during the Reagan and Clinton administrations, Presidents Reagan and Clinton did not seek to remove and replace U.S. attorneys they had appointed." So—

Fielding: Oh, I see what you mean. Well, yes, then there is a difference. There is a marked difference there, but what bothered me about the Clinton—and I thought it was 100 percent but obviously it was 80 out of 91 or something. What bothered me was that they were just wholesale removed. It wasn't that they staggered them. People were in the middle of cases. Even when I came in and there were people that we wanted to remove, you don't remove them in the middle of a big case or you don't remove them if they're involved in a political case, anything like that. You have to do it on a piecemeal basis.

Perry: So when you started afresh at the beginning of the Reagan administration, I think I had also read that it's a matter of course that the U.S. attorneys will offer their resignations?

Fielding: They usually within a period of time will offer to step down. But it's generally a very calculated change and exchange—

Perry: And more gradual through those first couple of years.

Fielding: Yes, it's not just a wholesale remove them. And again, in the Clinton years, and especially in the Arkansas cases, they were removed and nobody was in there. They just got the guy out and then the acting was whoever was put in.

Riley: Is there a proper set of standards to be used in making a decision to relieve an attorney?

Fielding: No.

Riley: OK.

Fielding: No, it's the President's prerogative.

Riley: President's prerogative.

Fielding: He wants to, but number one, it should be a legitimate reason, it shouldn't be an illegitimate reason, or two, even if it's a political reason, it's his appointee. He can appoint them. He can remove them. But you don't do it in a way that makes it look sinister. You don't do it in a way that makes it look political. You do it in a transparent way. "I'm getting rid of that guy because he's a Democrat. I don't care what they say." But he has the prerogative to do it. But once the fire is started and then some wag at the end of the table says, "Well, it's the President's prerogative to do anything—" Fine. If you believe that, say it the first day. Don't say it after you've said that we've dismissed them because of improper conduct or because of inefficiencies. Don't let it get going.

Jones: Back to my inarticulate effort.

Riley: Stop kicking yourself.

Fielding: Wait a minute; I'll give you an inarticulate answer.

Jones: You came in when the fire had already started and I guess what I want to know is: What do you do at that point? Because you are deep into the issue of executive privilege. It's the nature, it seems to me, of a somewhat elastic principle like executive privilege that it's going to keep coming once it's underway.

Fielding: That's right.

Jones: How do you manage it?

Fielding: Well, you manage it as best you can. I managed it as best I could. I don't mean to give you an answer back that doesn't answer your question, but that's what I was faced with and that's what I had to do. But it also—gosh, this sounds like I'm apologizing here. I still was catching up. I mean this thing was burning in the grass and I was standing in it and didn't know it because it was going on. What you do is you do what we did. We managed the facts, we isolated stuff, we preserved all the documents so that no one could say, "You're doing this." We counseled all the people to shut up and not talk to anybody except who they should talk to and we got the Justice Department, which was in disarray, to finally cede to us some of the control of this thing because they were not dealing with it properly. They were dealing with it a poor way.

Riley: Cede control in what way?

Fielding: Hmm?

Riley: You said that you got Justice to cede control—

Fielding: We had to take it away from them and the handling of it because they were saying things, they were sending people up to testify and they were testifying under oath to what they were told and it turns out it wasn't right. Then there was the subissue of did the guy perjure himself. And of course this is a field day, and it just started to go everywhere.

If I had to have an executive privilege fight, that's not where I wanted it. I wanted it on something that was good, national security, clearly defined. An issue of power, not of potential wrongdoing, sub rosa.

Riley: But that wasn't—

Fielding: That wasn't to be. And there was one I thought was going to happen because somebody wanted Condi Rice to come up and testify about clearly classified something or other that was a fishing expedition. I thought maybe that's the fight if we have to have the fight. That'll divert the attention and frame executive privilege in a nonscandal context. Purely a power context. But it faded. I think they read my playbook.

Riley: If I understand correctly—I'm not an attorney—that the courts usually stay out of these fights in deference to—

Fielding: If they can, they'll stay out because it's a political issue.

Riley: To try to force the parties—

Fielding: Right.

Riley: If that's the case, are you taking any steps to work out a compromise with the Hill on these things, or are you simply staking out territory as to what you can and cannot do?

Fielding: Oh, no, no. We had negotiations, but it would never, never, be good enough from their point of view, or their demands weren't satisfactory to us. So that's where we—

Riley: Was there anybody on the Hill that you felt was in a position of power who was reasonable on this topic, or had the atmosphere become so polarized when you came in that—

Fielding: Well, the atmosphere was polarized, but the people I was dealing with were not interested in solving the problem in either House. They just weren't.

Riley: And what about within the executive branch? Are you having to sit on people who are trying to be more confrontational than you felt—

Fielding: Sure.

Riley: Your cheerleaders?

Fielding: Nah, tough guys.

Riley: So how does it eventually get worked out?

Fielding: Well, there was an article that talked about my strategy being buying time, playing it out, and that's pretty much where we ended up. [*laughter*]

Riley: Was that your intention from the outset?

Fielding: I had it down to the days. I really do think this paper is going to be illuminating to you all.

Riley: Good.

Fielding: It doesn't say that.

Perry: Now you know.

Fielding: I'll tell you the funny story. You have it down to the days, literally the weeks, and then days, and then all of a sudden they go on recess, phew, and then they come back. Woo. Reshuffle the days again.

Riley: Anything else you want to probe on this, or should we move on to something else? One of the things that you have a part in, according to the briefing materials, is the disposition of the Libby case, and I'm wondering what you can tell us about that.

Fielding: I'm trying to think. There was a *Time* magazine article about the Libby case about a year after we left. I don't know how their sources—it was such good reporting I was accused of being a source and I wasn't, but it really was good reporting as to the end of it.

But in the first instance, of course the Libby case had been going on when I got there, but there was a court decision and then the question of what the President should do. A lot of pressure was on the President to grant him a pardon before he was sentenced, before he had to go to jail. I advised the President what I thought he should do and he accepted an option of granting a commutation of sentence. His statement at the time that he did that was prepared by me and my office, and it laid out and tried to maintain the sanctity of the jury's decision and was respectful of the jury's decision of guilt, but deferred the imposition of jail time. No restoration of civil rights. Just that.

If you read that you will see—most people didn't read it carefully when it was released, but if you read it in the context of asking for a pardon afterward, it pretty much blocks a pardon later. But at the end of the administration, people started clamoring for a pardon for Scooter, and so I again went through the whole transcript and analyzed it. We had many meetings about it. Not a hundred, but we had several meetings about it.

Jones: Within your staff?

Fielding: No.

Perry: With the President?

Fielding: With the President and Vice President, Chief of Staff, and the counselor, Ed Gillespie. We had a series of meetings about it and it was obvious. I wanted the President to stop all pardons after Christmastime. Just get away from that end of the administration business, especially the Scooter one, but he didn't bite the bullet on that one.

Jones: And your rationale was you don't want that—

Fielding: That Marc Rich thing. Plus the temptation at the last minute. Best friends come in and say, "You've got to free Joe, he's my—" dah, dah, dah, dah. And people are not shy about buttonholing the President of the United States and asking for pardons. It was driving him crazy after a while. He really got annoyed about the whole thing, but he was always polite and would say, "Take it up with my counsel."

But the pressure was really on, and at the very end, Scooter asked to—the reporting is good on this *Time* magazine thing, except for one thing, which I'll tell you about—at the end he asked to see the President. I discussed this with the President. I said to him (Scooter), and to his lawyer, "That's not going to happen. I'll meet with you." I met with him on a Sunday and had lunch with one of my deputies and we just sat there and talked for about two hours and he pleaded his case. But I had gone through the thing and in my judgment the conviction was maybe unfortunate but it was valid, it wasn't a goofy conviction. It wasn't a political conviction. It was a solid conviction.

People say, "Oh, the reason that the President didn't grant it was because he wanted to know if Scooter showed remorse." That's not—he asked me the question. That's why it was such good reporting in *Time*, because there were things that only three or four people knew and some of that is in that article. Bad leaking. Good reporting.

But I mean he did ask me if he seemed remorseful at all and I had to say no because he didn't. He was defiant. I've known Scooter for years and I like him. I've worked with him in private cases and I had a client in the Marc Rich hearings when he was testifying, so the final decision was made, but it was really at the very end of the term. The President put it off until—I don't know what else to tell you. Read the article. It's pretty good reporting.

Except, except, and I've narrowed it down to two people who were sources, because the reporting doesn't seem to indicate certain people took positions other than me. I think the positions were unanimous within our group, except for the Vice President, of course. And nobody wanted to take the position in front of the Vice President except me.

Riley: Can you say anything about the meetings that were held? You said that the Vice President and the President were in the meetings to discuss these things.

Fielding: Oh, yes. Very thorough discussions. Very frank discussions. With the exception that some people didn't want to say words coming out of their mouth in front of the Vice President. That's perfectly understandable.

And the President didn't want to make a decision in any of these meetings. He made the decision one night and buzzed me the next morning. We talked about the early mornings and how he made his decisions.

Riley: That was on the commutation or on the—

Fielding: On the pardon. The commutation was done and seemed to be a ground that was defensible in my mind for somebody that had given years of public service. And the case itself. He was convicted, but I've got to tell you that for a prosecutor to continue a case when he knows that whoever he's grilling wasn't the source and he knows it because he knows who the source was, that's bothersome to me. But nonetheless, he did establish perjury. But it was perjury to no avail, and that's what bothered me about it.

Jones: Did you know along the way that it was [Richard] Armitage?

Fielding: At some point I did. I don't remember when, but I did. Yes, we knew it. Of course, yes. I think we knew it before the trial was over.

Jones: Just as an observer, just reading accounts and listening, that Armitage—why didn't he reveal that in advance?

Fielding: If he had revealed it the first day it would have been over. But the web was being spun. Scooter kept saying, "Your memories fail." He actually tried to trick me at one point when he talked to me on the phone. He said something and then he said something back to me. "See, you didn't get that right. So I hope you understand how sometimes you don't get things right." It was something about somebody had called me on his behalf and I had two Senators mixed up, so therefore, see, I was guilty of the same thing. Come on, Scooter. Stop it. Armitage lost a lot of fans out of that thing. But anyway—

Riley: When you came back into the White House, was it fairly clear then that there was a division between the Vice President's office and the rest of the White House over what was going on with Libby?

Fielding: Only with the Vice President. Not necessarily with his office. The Vice President disagreed, but I wouldn't say that everybody in his office disagreed.

Riley: OK. Well let me pose this in a broader sense. Could you talk a little bit about what the Vice President's role was within the White House as you experienced it? There are pictures of the Vice President's engagement in the White House early on that I think probably approach caricature, but you're somebody who had experience later on, and I'm just wondering if you—

Fielding: But I also came in later on, too.

Riley: Yes, exactly. That's what I meant.

Fielding: I'm sure that their relationship had a maturation to it as the years went by. But, no, the Vice President—the only time I really saw him or dealt with him, except when some particular issue came up quickly, was at National Security Council meetings. I attended all of those in this

time and I had attended only one or two in the Reagan years. All the years. Just a whole different emphasis. A different role that the counsel had in the Bush administration.

Jones: Just as an aside, why the change?

Fielding: I have no idea. I assume it was because of the war. I assume that's what it was, but it was markedly different and I was brought in to every NSC meeting and a couple of days a week we went down the Situation Room with the President and talked to our commanders overseas on the closed-circuit television.

Lived through the surge. Not just the political side of getting the surge approved and getting the funding for it, but also the side of watching it transpire. You didn't need a lawyer to see what was happening there.

Jones: This had been set with Gonzales?

Fielding: It had started with Gonzales and apparently continued somewhat with Harriet Miers. But as soon as I came in, these are the meetings you're invited to, and I was invited to a huge panoply of meetings, everything from environment to nuclear energy expansion to Katrina, domestic and foreign. It was really a much broader portfolio of domestic Presidential decision-making. And every President deals with decision-making differently, so—

Jones: May have been the source of yesterday, you reported that Gonzales said, "Gee, you're going to need to know a lot about war." [*laughter*]

Fielding: Well, that's right. The law of war. But you did. It was funny and I was called upon to—let's see, how I can do this and make sense? There are certain decisions that only a President can make and there are guidelines that are a set of protocols that have to be observed before it's given to the President. Certain recommendations have to be made, and if they don't fit, then I would be in a position to have to say, "That doesn't work," or "You can't take that to the President until you've decided this or that," or advise the President what his options were. All very highly classified, compartmentalized stuff.

Riley: This is national security stuff?

Fielding: Yes, but again, that was in my portfolio this time and it was not before. I don't know who did it before, because at that time the NSC did not have its own lawyer. I don't know if it was done by State Department or Justice Department. I don't know who did it in the Reagan—but the portfolio was very greatly expanded at this time, and even included the preparations for the flu epidemic—the panoply of issues that you face in a White House and the President faces, so his mouthpiece faces them too, I guess is what you say.

Riley: Are you able to rely on staff support for this, or is some of this so highly—

Fielding: Oh, on the classified stuff, sure, staff support can feed me oceanography reports, but no on the other stuff. It's either myself or one or two other people in my staff who were cleared. And like on the FISA [Foreign Intelligence Surveillance Act] stuff—we haven't touched on FISA, but only a very limited number of people had access to certain issues about FISA, which I

think probably inhibited Gonzales in a way, because although I had a pretty good background in that sort of thing, I don't think he had any. And so then he is reliant on other people to give him his advice, and I think it's fair to say that the Vice President's office in some of the national security issues and some of the war decisions, if you will, generically, the Vice President's office and his counsel at the time was read in along with Al, and I think Al was totally dependent on his counsel.

Riley: I see. Is this [David] Addington?

Fielding: David Addington. And that ended when I went there. I had known David Addington before and also during the transition. Of course Cheney was running the transition when I was appointed to help them out, and when I set up my little band of brothers to do this, Addington asked if he could have an office in our group so that he could observe what was going on because he was going to end up being the Vice President's counsel. So that was kind of interesting in hindsight.

Riley: Did he get the office?

Fielding: Oh, sure. Open door. [*laughter*]

Riley: Well, I guess part of my question is if you're moving into an office which has a much broader portfolio than had been the case earlier, how do you do the job? How do you educate yourself to handle this much broader range of issues?

Fielding: It's more a time management problem than learning. I mean you dig; you ask as many questions as you can, and try to satisfy yourself that you're comfortable. Or acknowledge that you're not comfortable and put your hand up. But it's a time management problem as much as anything because there are only so many working hours in a day when you can do that, plus meetings, plus personnel issues, plus the normal stuff of running an office. And I had to rely on people. For instance on EPA stuff I wasn't about to learn the niceties of the Clean Air Act and all that. I knew the general concepts and I also knew the limitations on the contacts between the White House and the administrator and what the law precluded and what it didn't. But as far as the nitty-gritty of clean air, I had one or two people who just did that and reported to me, and that was the only way I could stay with it and I was happy to do it.

I thought of something else last night. We were talking about my evaluation of Bush as I stepped into this thing. One of the first meetings I went to was on Katrina. They're all sitting around the Roosevelt Room and the President came in; there is the administrator and there are generals all over the place and National Guard people. People started to report and they started talking about the problems with the trailers, and at one point someone said something about there are 2,700 trailers and we've got that reduced down to 1,600, a statistic like that.

The President looked up and he said, "Wait a minute. The last time you told me there were 37,500 and you hoped to have them down to—" and I'm looking down at his notes. He has no notes at all. He remembers this stuff and he's not a dummy and he remembers the nuances of things and the things that people said to him six months ago with all that he has day in and day out. I was very impressed because I really looked over and thought, *He's got a good set of notes.* [*laughter*] And he had none. I meant to mention that yesterday.

Riley: I wonder if you could take off on that, Chuck. One of the questions that you had was about a general comparison of the two Presidents you've served and their operating styles and how they like to receive advice, their decision-making styles and things of that nature.

Jones: Along with the fact that you came in with Reagan, so you're at the start of an eight-year term and at the end of an eight-year term.

Fielding: It's more fun to come in at the beginning. *[laughter]* Much more fun at the beginning.

Jones: There is one other aspect of this comparison that I'll throw in, and that is working with non-lawyer-trained Presidents in both cases, whereas Nixon was a lawyer. Anyway, more on these comparisons would be very interesting.

Fielding: It's very hard to compare, because their styles were so different. Even their management style was different. But to the lawyer/nonlawyer thing, when I first went into the Reagan White House, he wasn't a lawyer but everybody else around him was. You had Ed [Edwin] Meese, you had Jim Baker [III], you had everybody—[Michael] Deaver was not a lawyer. Everybody had their own ideas about use of lawyers, so I had to develop my clientele carefully.

Jones: Interesting.

Fielding: But again, honestly, I had to do that going in the second time. I remember sitting down with my staff people and explaining to them the new sheriff's in town but we have to go out and recultivate the relationships between this office and the other offices and constituencies in the government and in the White House because people will not come to you if you are not responsive, which, I'm sure you've heard, one of the bitches about Harriet Miers's operation—fair or unfair—was that she just never got anything done.

We had to be responsive or not responsive in a positive way. It's easy to say no, so you had to really go out and mend the fences and develop relationships. It's easier to do it when you're starting out than when you're catching up, but by the same token enough of my staff were new and just getting into the game, too, so it eased it a little.

But to compare the two: Ronald Reagan didn't get in at quarter to seven in the morning. He was an interesting politician in that he had been pretty consistent all his professional career, political career, so he didn't have to worry about what he did say five years ago on such-and-such an issue. And if he was deviating from what he said, he knew it, and was willing to compromise on certain things, but he knew he was compromising and he was doing it consciously and he told people he was doing it consciously. He also had certain agendas he wanted to get done. Big items. And the rest of the government kind of ran itself. He had good staff people and he was very comfortable with Jim Baker as Chief of Staff and the troika worked well because it had a pressure within itself. The pressure was on all three sides and so it did work well.

The only difference in that White House was that the National Security Advisor really was kind of separate and apart. It wasn't part of the management team in the sense that you thought it would be. Or the way Henry Kissinger thought it would be in prior administrations. So he was

comfortable with that. He wasn't as comfortable with Don Regan—Regan's tenure was a lot different.

By comparison, of course I'm coming in late to Bush 43, so there are established relationships, there are established punch lines, you don't need to tell the joke if everybody knows the punch line, but if you're the new guy you don't know what the punch line is. You hear the punch line but it doesn't make sense to you, and that's the downside of coming in late. And I guess part of the upside of coming in late is nobody knows what to expect from you, so they do a little sizing up, but you can get to establish your relationships.

To get back to comparisons, the personalities are different. First of all, you have a younger guy, Bush. You have two guys who are very sure of themselves, but in different ways if you're looking at them as people. But both of them were very sure of themselves. Both of them were religious, in a sense, but one of them was much more openly religious and that was Bush. Monday morning he would come in and talk about the sermon the guy gave up at Camp David. He would talk about it, dissect it, so it was a part of his life.

Bush worked some days dawn to dusk, but other days he would take time in the afternoon to work out. It's really hard to compare the two of them because they were such different people. Both had a good sense of humor. Both of them were little bawdy. One of them used to keep a cigar in his drawer and every chance he got he'd put a butt in his mouth and chew on it a while and put it down and look around. I don't know how else to really—

Jones: When you came in, who were the principal people you judged you really had to make contact with, obviously apart from the President, for your office to function well and your own sense of these are the important people for me?

Fielding: Well, depending on the issue, I had to make sure—at that time Gillespie wasn't there, so Dan [Bartlett]—it depended on the issue. I had to make sure that I had access to people who were constantly talking to the President, because that's a two-way communication at that point. If I want to plant a seed of some idea to see how it follows around and if the President gets it or not, test that too, to see who's really got the access to the President.

But the press office was important. Legislative affairs was important to the things I was doing. Everybody around the room was important in one way or another. The Chief of Staff and his deputy Chiefs of Staff were who I dealt with most just because that was the issue flow, but not the same as with Reagan. With Reagan really very few times it didn't go through the Chief of Staff to the President or you'd go in to see the President and the Chief of Staff was usually there, whereas the President, Bush, it didn't necessarily have to be that way at all and Bush was always saying, "Come on in anytime you want."

But of course in those mornings when I'd be down there talking to the President and the Chief of Staff would come in, I always got a phone call from him later saying, "Is there anything I should know about this morning's meeting?" He got tired of me saying, "Well, it was about you so I can't tell you." [laughter]

Perry: Could I ask a slightly more technical question about signing statements?

Fielding: Oh, yes. I put that on my list, too.

Perry: We're on the same page.

Riley: Are you OK to continue? Do you want to take a two or three minute break?

Fielding: I'm fine.

Riley: All right. Let's go.

Jones: Which, by the way, there is a typo.

Riley: I saw that.

Perry: I caught it today.

Riley: "Singing" statements.

Jones: Singing statements.

Perry: I know. I think that's a nice term.

Fielding: I'm very familiar with those.

Perry: Did you do that when you were the Easter Bunny?

Fielding: No, no. Bunnies don't sing. [*laughter*]

Riley: All right.

Fielding: Signing statements.

Perry: Signing statements. Well, they became a source of controversy, and I'm wondering in light of your view of separation of powers issues related to executive privilege, how did you view them? Did you have to help with the drafting, or did staff help with the drafting of those?

Fielding: I was not against signing statements. We actually had signing statements in the Reagan administration as a way to rationalize things that we wanted to send the message. Even though he was signing a bill he would send a message.

The problem with signing statements is that in the first six years they got so involved and so convoluted and so long and technical that everybody who didn't like a comma or a certain word in a bill would throw it into the signing statement. So they lost their effectiveness in the primary message meant to be conveyed.

And they became the subject of ridicule and questioning as to the validity of them and what are you trying to do? Is this extrajudicial? Extraconstitutional? So we had signing statements the last two years, but after the first couple of months every signing statement was usually short, or you don't know, but there wasn't a signing statement and the President agreed and said he didn't

want any signing statements. And I'd say, "Let's have one if I can convince you to have it as opposed to people saying let's have one." And that's kind of the way we worked it out in order to control it, because it had gotten out of hand.

Perry: Again, I'll be the statistics person, 750 in the first five and a half years of the Bush Presidency. You had mentioned President Reagan; the statistic I found was 105 over two terms.

Fielding: What I'm saying, but we did use them. It wasn't something they invented.

Perry: Exactly. There was precedent for it, but they were just becoming more numerous and longer.

Fielding: Well, longer and technical.

Perry: And detailed.

Fielding: They were losing the emphasis that you really wanted. The signing statement was to alert you that you didn't think that a certain provision was constitutional, usually, and therefore, accordingly, I will treat it as if it meant—boom. And that's all you've got to say. But as I say, they became the collection, and I don't know whose favorite idea that was, but by the time I got there it was—well, you see the number. And they were long and they had lost the emphasis.

Jones: Also lost legitimacy.

Fielding: Well, yes, exactly. Exactly.

Perry: Could you think of some examples of, in your two years, when you suggested to the President or convinced the President there should be a signing statement?

Fielding: Oh, God, I'd have to go back and look at it. There were instances, because he'd say, "I thought you said we weren't going to have any," and then, "Well, you should have this because this is an issue that's in a court case," or "This is an issue that's—"

Riley: Did you get pushback from the Vice President's office on signing statements?

Fielding: Not that I remember. My interplay with the Vice President's office, and you asked a lot of questions about that yesterday, about did the Vice President do this or that? It was pretty limited. I dealt with Addington from time to time, but it was not what Gonzales had to deal with. David Addington is a very good lawyer. He knows his technical DoD stuff, a very valuable asset. Everybody predicted we were going to be clashing. It just didn't happen. It happened once or twice, but they were short-lived, and then it didn't happen at all. So I didn't have that much interplay with them except reaching out to them. "Do you have a view on this?" or something like that.

Riley: Did you have any perceptions about whether the Vice President's alleged role in the first six years was overstated or—

Fielding: Well, my view of that would just be an observational view. I read the same stuff you read. You know. I know that David Addington, or the Vice President's office through Addington, had significant influence on Gonzales, but that ended.

Perry: How about the Office of Legal Counsel and the Justice Department? I presume that the memos that you implemented as you came in about who could talk to whom—

Fielding: There was a specific dealing with them.

Perry: There was?

Fielding: Yes, because they were our outside counsel and we, in a way, were theirs, too.

Perry: Did you think that they had grown too powerful in the early years of the Bush Presidency and particularly after 9/11?

Fielding: Well, you're talking about in one narrow area and, you know, I wasn't there. I've read the stuff. I wasn't there to know who struck John, but I could make the same assumptions you could make about John Yoo and people like that, but I don't know them. I've read the stuff. I consulted with Steve Bradbury when I got there and said I really wanted a definitive report. "I think we have to prepare a definitive report if you want me to tell the Attorney General to tell you." He said he would work on that and he did as to what really happened.

Of course he never got confirmed. He got tagged with the whole thing himself. If you read it on paper it looks like they were cajoled into taking positions, but that would be totally unfair of me to say that because I just don't know.

Riley: But there were some opinions that were reversed or withdrawn.

Fielding: You bet. And there were some that were withdrawn when I was there.

Riley: Did you have a role in the process?

Fielding: Yes.

Riley: As an instigator?

Fielding: No. As somebody who—"instigator" sounds devious.

Riley: Forgive me. I had an elegant choice of words yesterday and not today.

Perry: Facilitator.

Riley: Was it at your initiation?

Fielding: I certainly thought that they should be reviewed and taken a good look at.

Riley: And you had access to all of those memos in your office at the time?

Fielding: We didn't have access to all of them. I had access to them but I didn't have them.

Riley: Didn't have them.

Fielding: That's right. And I assigned one of my deputies to do nothing but deal with that.

Riley: OK.

Fielding: I mean, not do nothing, but—

Riley: That was his principal assignment.

Fielding: No, it was one of his principal assignments.

Riley: One of his principal assignments.

Fielding: To get to them. Somebody asked me yesterday about preemptive. One of the preemptive things that I thought about last night was actually the—I guess it was preemptive because it slowed down the lava flow—it was preparing an Executive order for the President to sign about the use of torture in interrogation techniques, which came out the first year I was there, mid-to-end of the year. The purpose of that was to try to place it right. At the end of the term Steve Hadley and I had a lot of conversations about what we could do so that the President wasn't unfairly, at least in our minds, labeled as the "torture President," because it wasn't something that he abided by. He wouldn't have approved torture as a tool. So it wasn't something that we weren't conscious of. And actually that issue has kind of dissipated I guess at this point.

Perry: This was the Executive order you're referring to. It was July of '07 that the common article from the Geneva Convention would apply to POWs [prisoners of war] in CIA detention and their interrogation.

Fielding: Yes. That's it. And that was like giving birth to a pineapple.

Riley: I hope the tape picked that up.

Fielding: I forgot it was taped. I'm sorry. I apologize.

Riley: No, I genuinely hope the tape picked it up.

Perry: Wonderfully colorful expression.

Riley: History is much enriched by having one's best private thoughts.

Perry: Can you tell us about the birthing process?

Fielding: Oh, God, I'm embarrassed. No. I mean there was a lot of resistance to it, a lot of resistance.

There were people at State Department who used to be at the White House who had a revisionist view of what they did when they were in the White House and constantly were trying to paper the record. So they were pushing for it and Condi Rice certainly was pushing for it, but there was some resistance. But we got it done.

Perry: Were you also at this time—I'm sure you were following the Supreme Court's decisions on the war powers of the President?

Fielding: Oh, sure.

Perry: Did you try to pick up those threads because most of those were going against the President and executive power, and try to adjust accordingly?

Fielding: Tried. Fast-moving.

Riley: Any briefs in particular that you were a piece of at this time, or were the cases already in the pipeline?

Fielding: They were in the pipeline. There was so much going on at that time that it's melding together in my mind because we also had to—during part of that period we were contemplating the “surge,” which was really, really a very courageous thing for the President to do. As it turned out it was a very smart thing for him to do, but it was very courageous because it was like in backing the immigration bill. He lost part of his own party over those issues. Again, as I said yesterday, he did things he thought were right to do whether it was smart for him politically or not, as long as it didn't destroy his ability to do things.

Riley: And you're a party to those discussions?

Fielding: Most of them. Some of them. I don't know if I was party to all of them. The bad ones I was not a part of. [*laughter*]

Riley: The good ones you were.

Fielding: That's right.

Riley: Can you tell us about your own perception of how the President was coming to a decision? The press accounts indicate that he was actually moving against some of the advice that he was getting.

Fielding: Now wait a minute. Which issue—

Riley: This was on the surge.

Fielding: On the surge. Oh. We had the briefings in the Sit Room. We were talking to the commanders in the field. He was making decisions. It was a tough political decision to make and certainly there were people on the Hill who did not want him to do it and there were others who wanted him to do more, wanted to just run over Congress. And the people in Congress who wanted him to run over. The Republicans said this was too important.

It was a gamble to go, but it worked, and he had confidence in [David] Petraeus. Petraeus worked on a plan and came up with it. I've got to tell you something, though. I really like David Petraeus. He's kind of fun to be around and he's smart. But he gave a speech to AEI [American Enterprise Institute for Public Policy Research] within the last nine months and the subject was the surge. A 40-minute speech. It wasn't a great speech, but it was a speech, and here's a guy who talked about the surge for 40 minutes and he did not mention the President of the United States one time in the whole speech. I thought, *I can't believe it. This is the guy who put his neck out there to give Petraeus the opportunity to succeed in the thing.* Didn't mention his name once. I was just stunned by that.

Jones: The President certainly didn't return that disfavor in his book. He praises Petraeus as so important—

Fielding: Oh, yes, absolutely. Also, I should note that the President really liked being Commander in Chief. He accepted the responsibility of it very personally. He loved being with the troops, too. Even right at the end. We went down for the commissioning of the aircraft carrier for his dad. It was the last weekend and on the way back we stopped at an undisclosed location where they were training people to go to Afghanistan and you could tell by the class where they were. Because the guys who just got there, and the others who were there longer, had their beards grown and their hair was shaggy and all because they were in different classes getting ready to be shipped over for different warfare types of things. He stayed there and had his picture taken with every single person in that room and of course they loved him. Sometimes he did two or three at a time, but everybody in the room. You could see it when he got back in the chopper he was just—

Jones: Juiced.

Fielding: Yes, juiced. Exactly. I'll tell you a funny aside. I was flying with President Reagan one time and we were sitting in the staff quarters, the senior staff lounge, and the President came wandering in just to chat and he walked over to my briefcase. I had a bumper sticker in my briefcase and my briefcase was open. So he picked it up and he said, "Oh, I believe this."

And the fellow at the other end of the couch said, "Hey, Mr. President, hold that up with Fred." And he picked up one of these little instamatic cameras and he took a picture. So there I am on Air Force One with President Reagan and he's holding up a bumper sticker that says, "My lawyer can beat your lawyer." [laughter] I love this picture and I had it in my office in the Bush administration. Same office. Same phone number. I opened the drawer and there were these sticky things, "Hi, my name is Fred," from when I'd been there in the Reagan administration. It was still on the side of the drawer.

But anyway, so the President was up there and he saw the picture and he said, "Hey, that's really cool. Do you still have that bumper sticker?" I said yes. He said, "Next time we're on Air Force One, bring it along."

So we're down at the aircraft carrier, we're flying back. This is the new Air Force One, which is like a hotel or a cruise ship. I'm sitting in the staff lounge talking to Condi and we're talking

about a pardon that she really, really wanted for the father of her girlfriend who was blown up at the church in Birmingham.

Perry: Yes.

Fielding: Her girlfriend's father had gotten himself in all kinds of federal trouble and she wanted a pardon for him, which didn't happen, but we were talking about it. We're starting to get ready to go down and the President walks in, sticks his head in and he says, "Do you have that bumper sticker?" I said yes. So now I have two pictures of the President holding up—[laughter] I defy any lawyer in the United States to have two pictures of Presidents holding—it's really fun.

Riley: That's fabulous.

Fielding: I'm sorry. I'm getting off on all these silly things. Easter bunnies and bumper stickers.

Riley: Hey, look, that's what's great about this job. We get our political scientist colleagues who are up there doing their regression graphs and so forth.

Fielding: He's talking about you now.

Riley: No, no. I'm looking at Chuck because he knows these people. He's not exactly a member of the tribe.

Perry: He was among them.

Fielding: He led them.

Perry: And you led them.

Riley: But for the rest of us who are not—

Perry: Who are qualitative.

Riley: Yes, who are qualitative.

Perry: Rather than quantitative.

Riley: These are wonderful moments and they make the job worthwhile.

Perry: But I have a question about the portrait that you're painting of President Bush 43. These stories are wonderful about his personality and his intellect that impressed you. Why did the American people not see that?

Fielding: Some of them didn't. Most of them didn't, I guess. I guess by the end most people—he was painted in a very bad light. This is my own personal view and that's what you asked for, but I think he just got painted into a view. He was in tough times. He's less than articulate at times and he walks with a little lilt so he can be conceived to be cocky. Well, why did they say Ronald Reagan was dumb? It's the greatest advantage Ronald Reagan had. People always underestimated him.

But to answer your question, it was a perception and he couldn't shake it, nor could the—I don't know what you'd call them these days, the gurus who are supposed to change the image of people. They just couldn't seem to snap him out of it, but he was in a very hostile environment, too. And the war. He was beloved 9/11, 9/12, but the war wears people down and there were questions. In this whole thing about Saddam Hussein, did he have weapons of mass destruction? An awful lot of people thought that he did. I'm not taking out that culture, because I wasn't there, but I remember Bill Safire used to write about the weapons of mass destruction he had almost weekly. It was accepted that he had them, but I don't know if all of this was just cumulative. I don't know.

Perry: But you've talked about two people who couldn't rise above their image, Dan Quayle and, in a way, President Bush 43, and yet, you mention Ronald Reagan, some people said he was dumb, but his image usually was pretty positive among two-thirds of the people.

Fielding: His image was, and I think that history will be pretty good to George W. Bush. I think he has handled himself wonderfully since he left office and in very measured tones and he's done a lot of things that people don't even know about. He and Laura go down and greet the planes when they come in in Texas. When the troops come in they just go down there, unannounced, greet them and have their pictures taken, just nice stuff.

Jones: There are a couple of aspects to it, though, that puzzle me. Well, this doesn't puzzle me: As they say, when things go poorly, the President gets blamed, and it's very hard to get high approval ratings when there is a recession or a collapse and the war with no weapons of mass destruction. You just have to take that, or a Katrina. It doesn't make any difference. He didn't create a hurricane, but those are the effects—

Fielding: Or excuse me, since there have been no attacks, then the allegations of torture make him a torture President. If there had been another attack, nobody would ever have said a word about whatever you do to these people.

Jones: So that I understand. That does not puzzle me. That's the nature of the Presidency, but comparing Reagan and Bush, this does puzzle me, because Reagan ended up with a job approval rating higher than he had when he went in. What I can't understand is the intensity of the negative feelings, which—Ben-Veniste, for an example—and I know many academics and think-tank people and so forth who, on other personalities, are perfectly willing to be objective; they are trained as scholars to be objective—who have this gut reaction to Bush, which was deep loathing, and that I simply don't understand. These are elite people. In this very room, one of the advisory committee sessions we had, a noted historian said, "I loathe George Bush," and will probably later write a best-selling biography of him. That I don't understand—

Fielding: Well, you'll recall yesterday I said the same thing. The intensity of this feeling that there is something illegitimate about how he got there and it's not forgiven by time, it's exacerbated, and I just don't understand the residual hatred, if you will, and I use that term advisedly. Some people—somebody saying, "I loathe the guy." You can't loathe George Bush. There is no logical reason to loathe him. You may disagree with him, but he's not—you could loathe Bill Clinton. If you were a purist and moralist you would say, "He denigrated the office of the Presidency to the point where I loathe him." I could see that. And maybe that's what people

say, “I loathe him, because he got us into war.” I don’t know, but I think a lot of it goes back to the easy scapegoating that put the tag on the question of the election and how close it was. It gives somebody something to start building the distrust and then—

Riley: Although—

Fielding: No. Go ahead, finish. I’m done. I always stop in the middle of my sentences.

Riley: And I always interrupt people.

Fielding: Please. I don’t remember what I was going to say.

Riley: I was only going to say that his approval ratings were in the upper 80s or 90s after 9/11.

Fielding: Sure.

Jones: The highest ever, lasting the longest time.

Fielding: Is that right?

Jones: Yes, by far. The peak was the highest ever, slightly above his dad in the Iraq-Kuwait thing, and it lasted much longer. He was at, oh, 70 percent for almost two years.

Riley: So the puzzle is getting from that illegitimate moment of 2001, which I think you’re absolutely right about, to beyond that two-year span to where we are now.

Fielding: It’s interesting because was there a precipitating event that started the decline?

Jones: Iraq. No weapons of mass destruction and then it started down.

Fielding: But you see there are certain stories that are constantly fed, therefore they don’t go away. It’s like the Valerie Plame thing. It was kind of a—I don’t want to say “nothing burger,” but it really was a nothing burger, and it was perpetuated by her own husband, for Christ’s sake. But it certainly shouldn’t have blown into what it did, especially with the Armitage thing, which was ludicrous.

Riley: There—go ahead, Chuck.

Jones: Well, it’s puzzled me.

Fielding: I don’t know the answer.

Jones: I guarantee you if you took a survey approval/disapproval among the group that I’m talking about, it would have been far lower.

Riley: They were in the 10 percent.

Fielding: OK. But then it starts out with philosophical disapproval and never changes, and the only thing it does is enhance their original feeling. That's a philosophical argument and it almost has nothing to do with George Bush.

Jones: I shouldn't be the one talking.

Fielding: It's hard to explain it, as I said. The only thing I could hook it to is this residual belief of illegitimacy, which fosters and reinforces philosophical disagreements.

Jones: But I figured you must have run into this on a regular basis.

Fielding: Sure. Oh, yes. Absolutely. But I also run into people and did run into people who certainly don't want to confront you face-to-face, because heaven forbid you might have an answer or be willing to debate back. And I've noticed that too, that sometimes people want to mouth off but they don't want to debate. It's an interesting comment, only scary, in my mind, be it Republican or Democrat, conservative or liberal, if the trend line of the population of the United States is more conservative than it is liberal, and yet the academy is liberal. The trainers of young minds is a flat-line liberal. Then you have an interesting issue on your hands. So in other words, if the line for conservative is here and you didn't have this, it might be here.

Jones: Possible. That conservative has hung around 40 percent throughout this. Well, since you were with the Reagan administration. It hasn't changed. Did what we're talking about here affect you in doing the job?

Fielding: No. It was something—when you advise a client, you have to deal with the facts. You have to deal with the law, and unlike other advisors, here you also have to deal with the realities of the world and note them, even if your listener knows them better than you do. I would think you should do X, but of course you have to know that part of the result of you doing X would be this ripple effect because of politics or because of perceptions or things like that. It's an ingredient you have to put into your judgment. Not your legal judgment, but your advice. But other than that it didn't affect me.

Jones: Did you see evidence of the effect on the President?

Fielding: He's very upbeat. Outwardly, anyway. Did I see it? No. There were times when he's frustrated when things come out. "How the hell could somebody say that?" That we just did this and this is the way it's portrayed. Sure, you get that, but that's steam-letting.

Riley: Did you see him down? Did he go through down periods?

Fielding: No. He's very upbeat. Much more so than his dad. His dad, I thought, used to really get down at times, but he wouldn't.

Perry: You talked about him yesterday, President Bush 43 as a younger man, when you would see him in Washington during his dad's administration. I think you used the term "angry." I think you said he was an angry young man. What changed for him? And did he ever talk about that to you? Because the portrait you're painting of him in office is much different.

Fielding: I don't know if it was he stopped drinking or if he found inner peace.

Perry: You mentioned that he would sometimes on Monday morning talk about the sermon that he had heard on Sunday. Did he talk more generally about his faith to you and its impact on his life?

Fielding: Not as the subject. It might drift into a conversation, but it wasn't the subject of our conversations. I don't think he thought I was particularly religious anyway. It was interesting to hear. He'd come back and he'd be all pumped up about the sermon and want to talk about it and I thought that was nice.

Perry: Did he proselytize to you other than that, ask about your own—

Fielding: Had to sign a pledge. *[laughter]* No.

Riley: You would have been one of the only—maybe the only person who had worked for Ronald Reagan in any senior capacity and was back in the White House. Did he pick your brain about Reagan?

Fielding: Oh, yes. We talked about things.

Riley: Do you remember any specific—

Fielding: I'll give it some thought. No, we did talk about it on several occasions.

Riley: Because you get the impression that for the Bush White House—the second Bush White House—that it was really the Reagan Presidency that was the North Star.

Fielding: Oh, yes. It definitely was, and to the staff it was. Remember how I said yesterday how the people said, "How's this different from what you guys used to do?" and stuff like that.

Riley: That means you're a rock star.

Fielding: Yes, rock star. An aging rock star.

Riley: Hey, it works for Mick Jagger, right?

Jones: Snoop [Dogg], bunny, bunny.

Fielding: Although there was the wonderful day when we were sitting down there; it was a National Security Council meeting but we were in the Sit Room and the Vice President usually came in before the President and everybody would stand up and sit down and he walked in and we all stood up and I was right where he was going to sit. And he looks and he says, "I can't get used to this, would you—" and I said, "Look, the old guys have to hang out together." But I was older than he was.

Perry: Did President 43 talk about his father?

Fielding: Yes.

Perry: In what context?

Fielding: Very warm context. We're up in Kennebunkport, he'd say something hypothetical like, "I couldn't get the old man off the damn boat. You know, he's not a kid anymore, standing up there." And it's funny, because obviously there were some of his dad's people who, like Brent [Scowcroft], who kind of deviated and broke with the President, and that had to have tensions because Brent and his dad are very close.

I'll give you a little vignette. The day after the 9/11 Commission interviewed the President and the Vice President, I flew down to Texas for a dedication of a wing of the Bush Library in honor of Barbara Bush. I flew down because basically a client of mine donated the wing and invited us to go down, and it was fun. But I saw them and they had a little reception afterward outside before the main event, before the dinner. I saw Mrs. Bush and she asked me about the commission and I said, "Well, obviously I saw your son yesterday and he did a terrific job." And she said, "Did you tell George? Tell George. He's been worried about it all day." Just like a mom and dad, you know, it was really kind of touching. I told George, but I didn't call him George. [laughter]

Riley: Was there a sign of relief?

Fielding: Oh, yes, he was very grateful that I told him that. But it was so funny, "He's been worrying about that all day."

Perry: How about the President's interaction with the other Mrs. Bush, with the First Lady Barbara Bush? Did you encounter them together?

Fielding: Oh, yes.

Perry: Often?

Fielding: Oh, yes.

Riley: Outside the bunny suit?

Fielding: Outside the bunny suit. President Bush and Laura are very gracious and obviously very attached to each other, and not in a Nancy Reagan-type of staring into his eyes. They are obviously just very much in love with each other and respect each other. They are very nice to people, to the staff. They were terrific to me and my wife. Really, really terrific. Little gestures. I'd only been there, started in the beginning of '07, and then the Queen [Elizabeth II of the United Kingdom]'s visit. That was *the* social event.

Perry: May of '07?

Fielding: So I'm leaving the Oval Office one day and he says, "Hey, Laura and I were talking last night. Would you and Maria [Dugger Fielding] like to come to the dinner for the queen?" And I say, "Yes. I'd like to say I'll ask her, but I can answer for her." And he laughed and said, "Good." We did get invited, and as it turned out, the Chief of Staff, the National Security Advisor, and I were the only members of the senior staff who were invited. So it was a nice

gesture and it was a reaching out. I had only been there a couple of months. It was just really very nice. I'm very fond of both of them.

Riley: They didn't do a lot of formal entertaining.

Fielding: No. No. He doesn't drink, but he always has what looks like a beer in his hands. It's Near Beer or whatever. Not Near Beer; Near Beer's got alcohol in it.

Riley: Nonalcoholic.

Fielding: Yes.

Riley: A name that I don't think we've talked about—I'm watching the clock, and we're definitely going to get you out of here by noon—I don't think we talked about Karl Rove at all. Rove was there for some brief period of time after you came in.

Fielding: Oh, yes, he was there.

Riley: What were your perceptions of Rove's role in the White House as you experienced it?

Fielding: My perception was that it had been diminished on a flowchart before I got there but he was still very close to the President. He was in on meetings the Chief of Staff and counselor and I would be in. Rove very often would be in those meetings. But Rove was not in a lot of the substantive meetings. It was more strategy meetings and stuff like that, but it was clear that he had been stripped of some of his responsibilities when Josh came in and shifted it around.

Jones: Was it the effect as well that there was not going to be another election?

Fielding: I think it was a little of that and I think there was a little of, well, he and the President were close and they had been together a long time. The President is very loyal, but I think that there were things that had diminished Karl's star, so to speak. Not necessarily with the President, but just in his effectiveness. And part of it would be, of course, there is not going to be—once the midterms were over, which is when I came in, and they were disastrous, so then, as you say, what was there left for him to do as far as long range planning goes? He was replaced, obviously, with somebody named Barry Jackson.

Jones: He was getting his name in the papers a lot.

Fielding: He sure was. And *had* been getting his name in the papers, because if you recall there were very clear indications for a while that he was going to get indicted as well as Scooter on the same basic type of charges.

Riley: So his diminishment was a combination of all of these things?

Fielding: Probably a combination of all these things. I don't think there was anything severe in the relationship between him and the President. There was some question as to whether Karl had been open with the President initially about his involvement in the [Valerie] Plame issue, and it became nuanced as to whether he had told the President or not. Of course one of the things I had

to do, or I assumed I had to do and did, was pull all the files on all that from the Bureau and the investigations of all of it, so at least I knew and I would let my client say things or do things that were consistent with the facts.

Perry: I'm thinking of an overlap between Bush 43 and Ronald Reagan in that you mentioned both of them being very loyal to staff members they had known for a long time or who were friends, but one difference would have been the Nancy Reagan factor in the Reagan White House. Did Bush 43 suffer for not having a Nancy Reagan-type person who could say, "This person needs to go. This person is hurting the President"? If that's an accurate assessment.

Fielding: Well, it's tough to say, because Mrs. Reagan's reactions to people were her reactions. They weren't necessarily based on anything except her reactions.

Riley: Did you get along with her, Fred?

Fielding: Yes I did. I got along with her beautifully. *[laughter]* I lasted. Although I must tell you, when I offered my resignation, the President was great: "I really appreciate your service." She called me up to the Residence and chewed me out. I wasn't loyal. "Look, [William] French Smith just left. Now you're leaving." I've got to pay my bills, you know? What do you say? But she really chewed me out. We made up after the President talked to her, but she really let me have it about being disloyal.

Perry: Speaking of making up, the President, Bush 43, in his memoir says that he was really worried that last day leaving the White House not having pardoned Scooter Libby, that the Vice President had said to him angrily, "I can't believe you're leaving a dead soldier behind on the field." And President Bush really worried that that would hurt their friendship. Did he express that to you that he was concerned about his relationship with the Vice President? After? During? Before? At the end?

Fielding: He didn't have to. We all knew that the Vice President felt very strongly about it and they obviously have made up. If there was any breach, I think they've patched it over. I saw the Vice President at the dedication of the library and he really looks different.

Riley: He's working on a book now and we hope to interview him, soon.

Fielding: Really.

Riley: Yes, but I—

Fielding: Ask him that question.

Riley: OK. I'm sure it will come up. You've seen the picture out here, so he's got a history with the Miller Center that goes way back.

Fielding: What I want to know is where'd Rummy buy that suit? *[laughter]* Flaps on the side.

Perry: Corduroy.

Fielding: I don't think it is. I thought it was khaki. Is it corduroy? And then Scowcroft—

Riley: Looks exactly the same, doesn't he?

Fielding: Yes. I guess he does.

Perry: He has aged gracefully.

Riley: One of the big issues that we haven't addressed is the whole collapse of the financial industry in the last year. And I wonder if that occupies a good part of your time, trying to figure out what options are available to the President and what the law permits. What are the options for public/private partnerships, for lack of a better word?

Fielding: That came on very fast. I should tell you that. Just suddenly it was—the Chrysler problem over here and then, all of a sudden, bang! My office was not in a lead role for that. The Treasury was and should have been, but the first couple of days the only thing I'll tell you, and I wish I had the documents because I could go back and be very specific, but, for instance, the first time that they came out with the TARP [Troubled Assets Recovery Program] proposal, it had gaping holes in its logic as to who it applied to.

In other words, if there were exemptions and redemptions for certain people and tax inclusion for certain categories of people, it didn't cover people who were doing things right. It was giving advantage—I'm saying gibberish because I just remember that's what the issue was and nobody had picked it up over at Treasury. I looked at it and I'm picking up the phone and I'm saying, "Have you thought about this?" "Oh!" "Have you thought about that?" "Oh!"

So it was a little scary the first couple of days because they were trying to put stuff together and they just—but I guess they are getting their money back now and decisions had to be made very fast. The interesting part early on was the Chrysler bailout or request and the negotiations, if you will, between the union on one side and the heads, the CEOs [chief executive officers]. I'm always a little bothered when there is a tendency for the government to start telling a private business who's their CEO and who's not their CEO, absent some criminal behavior.

Should we take a break while he's—

Riley: We can. Unless you want to—

Fielding: Let me.

Riley: OK. Why don't we do that?

Fielding: A couple of minutes.

Riley: We've got only about half an hour.

[BREAK]

Riley: —business yesterday. And I'm not even sure. I don't think any of the three of us feels really comfortable that we know how to ask the question about the extent to which you would have been involved in requests to the FISA court and the engagement of the administration with the FISA court. So let me open the door for you to comment.

Fielding: Well, let me try to shorthand it. My office was very involved in the negotiations with the Hill in trying to resolve the issue and come up with an acceptable compromise. I also had to be kept advised of the doings of the Justice Department with the FISA courts.

Riley: OK, now this is in the aftermath of the warrantless wiretaps controversy? Or was this—

Fielding: This was ongoing when I got there, but we had to grab on to it. And then there was the revelation that the Justice Department had failed to get appropriate—actually they were getting them after the fact. They were writing them after the fact in most instances. So that was one dimension of it, but the real dimension was getting new legislation or an acceptable level of understanding of what was really going on. Because the FISA bills as originally drafted were scientifically behind, and if you were a smart terrorist, you could get around monitoring or challenge a monitoring. If you had one spot in the United States, they would actually route their messages through the United States so it wasn't subject to being tapped.

So that was one of the major issues. Part of it was dealing with the real politics of the FISA. Was it necessary? You had to justify it was necessary, number one. Number two, did the existing law meet your needs if it was necessary? And of course this is all in the middle of spying, U.S. citizens and that kind of stuff, which really hadn't happened except there were isolated events where they reported and they had the system reported. But it was a typical issue where the hyperbole and the hysteria of the issue had very little to do with what was needed in the legislation.

But you had to convince people you need the legislation, first of all. And at the end, I really had one of my people assigned about 50 percent of his time just staying on top of the negotiations. He'd come back and we'd plot out the next day's strategy to go back and do it. So that's in the shorthand.

Riley: OK. But in the actual dealings with applications, that came from someplace else?

Fielding: We weren't involved in that, if that's your question. No. That was all done by the Justice Department, whoever did it. We started out the negotiations with meeting in the secure rooms up on the Hill with [John Davidson, IV] Rockefeller and Levin and every other head of Senate we could get for all the jurisdiction, trying to get everybody in one room type of situation. It took a long time to get it done.

Riley: Follow-ups?

Perry: Anything on the USA PATRIOT Act [Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001] that occurred during your tenure? I'm thinking specifically in reference to a provision it had in the 2006 version about the appointments of U.S. attorneys and a 120-day limit on those. Was that—

Fielding: Remember me telling you that when the U.S. attorneys issue was raging they were debating on a bill and I said, "For God's sake, don't say anything about the bill. Let's solve the other problem." That was the issue. It was coming ripe just as I was getting there and everybody looked stunned. It was one of the first days I was in there and I'm telling everybody to stop looking at something—all you were doing was amplifying what the problem was with the U.S. attorneys and there was no way you were going to block it, not with that other thing cooking. But that's right. I forgot. I couldn't remember what it was. That's what it was.

Perry: Right. So that clarifies. That was the reference that you made yesterday.

Fielding: Yes.

Riley: Anything else of the FISA thing? Did you have a piece of the development of the post-Presidency stuff? The library? The foundation?

Fielding: Yes. I also ought to touch on the transition to the new administration, but some of the things that the counsels had to do were the things that made everybody mad, like you can't use appropriated funds for anybody to start helping the President write his book and collect the data for his book. The President wrote the book mostly by himself, but he didn't collect the data for it, and so you had to make sure that appropriated funds were not used for that. And everybody said—because we also had administration term wrap-ups, which is a normal thing to do, which, if somebody wanted to write a history, all they had to do is take those.

Part of the genesis of the thing that I was talking about—the piece on executive privilege—in the back of my mind was to give that to the President, though it wasn't requested, just so he had a record of the evolution of it—because it was happening around him but he wouldn't have necessarily focused on the historical implications of it, other than as it applied to particular cases.

So we had to do that and make sure that—one of the things that you have to do in a job like that is deal with the President's well-meaning friends. Everybody told the President, "I'll take up the fundraising for that library, but you've got to let me do it before you're out of office because I talked to the guys in the Clinton administration and they said, 'You got to do it before you're out of office. You strike while the iron is hot.'"

I wouldn't let them do it and the President agreed and he said, "Nope, not going to do any fundraising until after," and he didn't. Occasionally he'd have a meeting with people, and if somebody would want to talk about it he'd say, "This is my dream, but that's all we're going to talk about." He never did any fundraising.

The transition. The President was also very emphatic that he wanted the transition from his administration to Obama's to be as smooth and historically significant as possible. That had not

been the case when he came in and I only know the tales from people who were there of every typewriter had the W taken off of it. Every one. Silly stuff like that.

Jones: Every keyboard.

Fielding: Hmm? Every keyboard, I meant, yes. And the President wouldn't let anybody talk about that. One of the worst things that happened was, like in my office, I probably had seven telephones and every one of them plugged in. If you took the phone from over here and plugged it in over here it wouldn't work. Every phone was keyed to the plug. And when they came in, every phone in the place was in one room. This is kid's stuff, but it caused a very severe problem the first couple of days operating in the White House.

Fortunately the Situation Room had not been affected. All of the rest, the people didn't have phones because they didn't know which phone went in which plug. He didn't want any of his staff to do that stuff and he made it very clear that this was to be an example of how you transition, and so we all had emergency meetings with people to go to secret locations. We had mock emergencies; how you would respond and then we had meetings with the incoming counterparts. We had meeting to discuss issues that were coming around and to introduce people to each other.

Greg Craig was my successor, and he and I spent a lot of time talking about issues that were ongoing so that the handoff was seamless, or hopefully seamless. Unfortunately, one of the things I told Greg, who is a really good guy, a good lawyer—

What he did that I couldn't believe—One of the things I stressed more than anything else to him was Guantanamo, because at the end, the last couple of months, I had been handed the box full of junk about Guantanamo and how do we do it. We had meetings in the Roosevelt Room. I conducted them and presented at the State Department. Gates and Condi and everybody in the world who was interested in this thing, Justice Department, made presentations to the President. The conclusion was we couldn't do it. We couldn't close Guantanamo. There were reasons. We couldn't get places that would accept these people, except basically Christmas Island was asking for five airstrips and 20 piers and they would take three guys. That kind of stuff.

Jones: Yes.

Fielding: It was just—

Riley: I might have taken them under those conditions. *[laughter]*

Jones: At least it's justified by the name of their island.

Fielding: No, but actually, it's changed. I fudged because—it's a great line; I can't think what it's called now. It's got a new name, but it was Christmas Island to them. It was Christmas time.

So I told Greg Craig, "Look, your guy is really out front on this issue of closing Guantanamo during the campaign. You're going to have to make sure that he doesn't stay out front prominently about closing Guantanamo because all kidding aside, I've tried for six months.

People have tried for a year and a half. If we could have closed Guantanamo, the President wanted to close it. He wanted to do it. We just couldn't do it."

And he took it all in. I brought in Steve Hadley to talk to him about it and everything. First thing Obama did, the first day he was there, was announce they were going to close Guantanamo within a year, and that was Greg and he got caught. It was in his lap. That was really disappointing to me because we spent so much darn time trying to make it smooth and give them—maybe they just didn't believe everything we said was true. I don't know. But we tried.

Jones: It's interesting that perhaps one of the prime lessons from Dick Neustadt's great book on Presidential power is always be sensitive to the effect of every decision upon your power in the future.

Fielding: That's right.

Jones: And, boy, that was a classic case of ignoring what the effect would be.

Fielding: Yes, you're exactly right, and it was a hard-learned lesson to tell him, so I don't know. I don't know what the decision process was, whether Obama just rejected it or whether it wasn't presented. I don't know, but it was certainly teed up.

Riley: It was a campaign promise, in a way.

Fielding: Well it could have been, except even if you make a campaign promise, there are certain things that the American public knows are campaign promises. You say, "We're looking at it. I know the American public wants us to look at it; we're going to look at it." You don't say, "We're going to close it in a year. By God, these dirty rascals didn't close it; we're going to close it in a year."

Riley: Unless you feel like you've got an outlet, and clearly they didn't have one.

Fielding: Didn't have one.

Riley: Anything else, ladies and gentlemen?

Perry: What about as you leave, do you discuss with Greg Craig the ongoing investigation about Miers and Rove?

Fielding: Sure.

Perry: And what do you say to him about that?

Fielding: They were urging that we settle the case before we leave. And I said, "Do you realize the implications of that? You'll have to live with those implications if we settle that case." And again, went through the whole Presidential powers. This is now yours to protect, basically. But their solution to it was for us to settle the case. That didn't seem to me to be consistent with my obligations.

Riley: Well, you've been a splendid source for us and a good sport to let us bug you for a full day and a half about these details. I go back to what I thought was an elegant metaphor about the mosaic. I don't think any one of these interviews will capture the entirety of the Bush Presidency, but we hope that the accumulation of them will, and you've certainly given us a very vivid piece of the portrait.

Fielding: Well, it's been a very interesting process. An enjoyable process, but interesting as well, and it's really made me rethink a lot of things and dredge up a lot of things and I have a feeling that I haven't covered so many things for you, but we'll get you that and if we have to get together again for executive privilege we can.

Perry: And then if you think of other things in the meantime you can jot those down as well.

Fielding: Another thing we ought to talk about a little is the pardon process, too, just because every President faces it and they are horribly in the spotlight on it and then horribly petitioned, and the Justice Department, the office of the pardon attorney, is really just bogged down beyond belief. The interesting thing is if there were like—these figures are not right, but if there were 500 applications in a year, now there are 5,000 applications. It's exponentially increased, whatever the number is.

Most of them are for commutations, not for pardons. And most of those are because of mandatory sentences that have now been reduced and the guy says, "I'm sitting in jail and the guy next to me is not going to." Most of them are drug charges, so the growth—but the problem is that the traditional pardons get lost in all the processing and it's hard to split them out.

The department is, I guess, underfunded. So you have a situation where it increases the tendency for people to ask the President to go outside of the channels that are—the channel being through the Justice Department—because the channel is clogged. There is nothing to inhibit the President from doing it. He can do anything he wants with pardons, anything he wants. It really is beyond question. You could impeach him if you didn't like, but he—and the President gets importuned by people. As I said, his friends would grab him by the elbow and whisper in his ear and he had people like close friends, guys he went to college with, any number of things. So it's worth a half hour of discussion of that. He was very frustrated at the end and he said, "You know, there is something wrong with the system when you have to know somebody to get a hearing in order to get somebody to look at your case."

Well, [Abraham] Lincoln had the same problem if you look back, but by the same token, it was a source of frustration, and as I mentioned earlier I really tried to get him to cut it off at Christmas time, which is a traditional time of granting, and then just get rid of the rest of them by either ignoring them or denying them.

You can just let it go. You don't have to have an affirmative denial, but there were people like Michael Milken and people like that, I mean, really blitzed, and [Jonathan] Pollard, the Israeli spy, that's going on again. I'm starting to get letters about it, so there are a lot of controversial ones that he didn't grant, by the same token. Everything focused on the Scooter Libby's application, which he didn't grant either.

Jones: Has there ever been a discussion of a Constitutional amendment to change—

Fielding: The Presidential pardon power?

Jones: I imagine that would be wild. Yes, the pardon power.

Fielding: Boy, that goes back to Anglo-Saxon days. The answer to your question is no, that I know of.

Jones: I certainly never heard of it.

Fielding: And there are people who say that there should be another type of relief that automatically occurs after X number of years if you haven't been rearrested or something like that, and there are proponents that say the system is faulty. One of the biggest commentators is a woman with the last name is [Margaret Colgate] Love, who—that's her business. She's a lawyer. That's all she does. And she used to be in the government, so everybody thinks that she's this font of knowledge on this subject and she certainly is, but it's her business to get them, so it's a little artificial that she's taking the high road.

Jones: What about giving the President the power to just arbitrarily put someone in prison? Just the other way.

Fielding: Well now, you know, we could try it.

Perry: Checks and balances.

Fielding: You don't like it, impeach him. [*laughter*]

Riley: Before this spins too wildly out of control maybe we ought to say thank you again.

Fielding: Thank you very much.

Perry: Thank you for being here and thank you for your service to our country.

Fielding: Well, thank you.