

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Elizabeth Holtzman

Columbia Center for Oral History

Columbia University

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## PREFACE

The following oral history is the result of a recorded interview with Elizabeth Holtzman conducted by Stephen O'Connor on May 6 and May 9, 2011. This interview is part of the Rule of Law Oral History Project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose.

3PM

Session One

Interviewee: Elizabeth Holtzman

Location: New York, NY

Interviewer: Stephen O'Connor

Date: May 6, 2011

Q: Perfect. I think that is where we will start. What I am supposed to say is that my name is Stephen O'Connor and I am interviewing Elizabeth Holtzman on May 6, 2011. So, I guess let's just start at the beginning. Can you tell me a little bit about your background? In particular, how it led you to get into politics?

Holtzman: Well, it's hard to know where the beginning is. Probably the two big factors, two main factors are that, one, my family cared a lot about politics and talked about it a lot. The second is my experience in the civil rights movement in the South. I was a young first-year law student and I went down South to work for a black civil rights attorney in southwest Georgia. I was completely unprepared for what I saw there. I learned from that experience, not only the brutality of the society there and the fact that the U.S. government was condoning it, failing to act against it, but that young people, primarily young people, armed with nothing but their determination for justice, could take a system that was controlled by violence and enforced by the local judicial system and just change it. That gave me huge optimism about the ability to make changes.

In terms of justice, not only having witnessed what happened in the South but also my own mother's family came from Russia—and she grew up during pogroms. My family is Jewish. I'm Jewish. Growing up with those stories and having the experience of being a victim of social

injustice was something that resonated with me very deeply. I always felt an obligation to stand up against it.

Q: Could you tell me some of the stories? I'm interested about both phases. Maybe starting with some of the things that your mother told you? Or you heard around the table when you were growing up?

Holtzman: You mean about the pogroms?

Q: About the injustice, and the pogroms, and the things that most struck you.

Holtzman: Well, that you could be the victim of arbitrary force and that you had to stand up against it.

Q: Is there an example of—?

Holtzman: Well, my grandfather was a business person. They lived in a small town not far from Kiev and were well off enough to live on a Christian street. They were the only Jewish family on that street. So when the armies came through—this was around after the end of World War I and during the civil wars in Ukraine—there was a different army coming through frequently and almost every one of them conducted a pogrom against the Jews. They assumed that there were no Jews on this main street, so my grandfather's family was safe. But Jews knew that Jews lived

there so they would come to hide in my grandfather's house—many of them, dozens. My grandfather let them stay.

My mom told stories about that because she was very scared. They all knew what it meant to provide sanctuary, but my grandfather did that. That's what you did.

Q: Did anything happen to your grandfather?

Holtzman: No, luckily no. People came; they almost killed him. But in the end, nobody was hurt. My grandfather told people that whatever could be done to protect them, he would, but that he could not guarantee anybody's life.

Q: How did they come to the United States?

Holtzman: That is another story, but that is not part of this.

Q: That is not part of it? Great. That's fine. I'm also interested in what you said about having seen brutality in the South and being entirely unprepared for it.

Holtzman: When I got to the South, I thought it was part of America, but I was unprepared. First of all, the minute I got there, I could no longer stay in the white part of town. It would be completely dangerous. The police wiretapped our phones; they followed me and other civil rights workers around. They jailed people for no reason whatsoever. You were completely vulnerable

when you were jailed. I didn't actually see cattle prods used on people, but I saw the results of cattle prods used on people.

There were two incidents that stand out most vividly. One is because of the school desegregation cases, the town of Albany, Georgia—or “Albinny” as they called it—shut down the black swimming pool. They had the white swimming pool open for kids but wouldn't let black kids into it. You can imagine how hot it was. This was July and August. Little black kids came to the fence, they wanted to go in, and they see the white kids swimming but they were not allowed in. I mean, it was heartbreaking.

There was a demonstration, a peaceful demonstration, because it was a completely non-violent effort there. You just saw the cops come and drag people away violently. They were totally vulnerable to whatever the cops wanted to do in the jail house. Of course every one of them got convicted. That was the system. In Americus, Georgia, there was a demonstration, a peaceful march. I shouldn't call it a demonstration. It sounds too disorderly. This was just a peaceful march for voting rights in the summer of 1963. The cops used cattle prods on the people, beat them, and arrested them.

I was given the clothing they were wearing to take to Washington. The three people who headed that march were charged with a capital crime, facing the death penalty. They were accused of trying to overthrow the state of Georgia. Can you imagine, with a peaceful march for voting rights?

Q: That's amazing.

Holtzman: They were convicted, of course. They would have been executed, probably, except that, of course, there were no blacks on the jury so the verdict was thrown out. That was the society.

This was before [Michael H.] Schwerner and [Andrew] Goodman and [James E.] Chaney were killed. There was no protection from any federal authorities for any peaceful demonstration. None. There was no remedy from the federal government, no relief. I saw that change. Of course, it took all these demonstrations and all these arrests. It took the bombing of the church in Birmingham and the killing of those little girls. It took Schwerner, Chaney, and Goodman's death. Finally, the federal government came in and finally things changed.

Q: Could you then talk a little bit of how you went from that point to deciding to run for Congress? What was the process by which you decided you should and could do that?

Holtzman: Because of my work in the civil rights movement, I was invited to come down and work in [John V.] Lindsay's administration. I've written about this; I have a memoir called *Who Said It Would Be Easy?*

Q: I've read your memoir, I just want you to tell the stories.

Holtzman: I was asked to come down to work for John Lindsay, and that was my first exposure to elected officials up close. I said, "If these people can get elected, I can get elected." I had worked in Lindsay's campaign after I was asked come and work in his administration. I knew a little bit about the electoral process, so I ran for office. I ran against the machine in Brooklyn and I won. Then I ran for Congress on an antiwar platform and I won. That was really what happened.

Q: Of course, during that era, there were a lot of people who were working on the left, working for civil rights and opposing the war, were very much opposed to establishment politics. But you took a different course.

Holtzman: Well, I wasn't antiestablishment. I was pro-justice. In fact, in my time in the South, I would say the people from SNCC [Student Nonviolent Coordinating Committee] looked at me with a lot of skepticism because I think they always thought I was working for the FBI [Federal Bureau of Investigation]. In the end, they did trust me. I wasn't certainly as antiestablishment as a number of others. I wasn't as left wing as many others. But I was certainly prepared to stand up against what I saw there.

Q: Could you talk about how it was you came to oppose the Vietnam War?

Holtzman: How it was? Well, it was obvious that it was wrong, and unjust, and stupid. What were we doing? It was a civil war. Our participation in the war was part of the Cold War politics. It took no account of the realities on the ground. It took us many, many years to understand that

Vietnam and China, for example, weren't so close. There was a lot of tension between those two countries. They ultimately went to war in the late seventies. The Vietnam War just made no sense. It made no sense to me. It never made any sense to me.

Q: From the beginning, it was just a complete—?

Holtzman: From the beginning. Of course, now I have to say, very few people were against it when I was against it. I had close friends who said, “No, no, no. It's important. It's this, it's that.” But no, I was never in favor of it, and sadly turned out to be right. It was a tragic war for us, for the Vietnamese, for our troops, for our country.

Q: One of many, alas. It's like we'll never learn from history.

Holtzman: One of the things I got involved in immediately in Congress was—not immediately, but pretty soon after I was elected, took office, I should say—I brought a lawsuit against the illegal bombing of Cambodia. The ACLU [American Civil Liberties Union] represented me in that case. I was tackling illegal presidential war making powers at that time. Then there was the impeachment proceeding against Richard [M.] Nixon. I learned a lot about constitutional war making powers, the power of impeachment, presidential abuses of power. I had a huge course in constitutional law—at the taxpayers' expense, I must say, although it was important because I had to understand what I was doing in order to make proper decisions. I had to steep myself, really, in the constitutional history of the war making powers, of the impeachment powers, and understand really what the framers had in mind in terms of the real structure of the Constitution.

Well, when I went to law school, we didn't really learn too much about that because Harvard Law School was not interested in the broad areas of the Constitution when I went there. We had one year course in the Constitution and we must have spent—I would say the course is eight months—and we probably spent seven months on the commerce clause. One month on everything else. I don't think we ever really studied separation of powers or issues like that. Today that would be inconceivable.

Understanding the framework of the Constitution and the framers' real concern about misuse of power and abuse of power, I learned about that in the course of the impeachment proceedings. I saw what Richard Nixon had done. His illegal bombing and secret bombing of Cambodia was the trigger and the commencement of a whole host of illegalities, including the Watergate break-in. The illegal surveillance started immediately from the leaking about the secret bombing of Cambodia. You have a straight line going from abusive war making powers to the break-in at Watergate.

Q: How would you describe your own role in the Watergate hearings?

Holtzman: Well, first I wanted to try to understand the Constitution and understand the impeachment provisions. I read the old books and read the new books. Raoul Berger was the professor at Harvard who had written a book, just at the time of the impeachment process, about impeachment. That was a heavy duty book because to understand about impeachment, you had to go back to the English practice. That was a practice that started in the—I don't remember

now—the fifteen century, the sixteenth century. It has antecedents before that. It was a lot of plodding through ancient legal history, which is not particularly interesting. But I had to learn it. I remember doing a lot of what I would call homework to understand that.

I felt my role was to make the right decision. I also wrote the resolution, which was not adopted by the committee but which was proposed to impeach Richard Nixon for the secret bombing of Cambodia. We did get a number of Democrats supporting it, but not the majority.

Q: So the impeachment—I'm trying to search back in my own memory about this—was primarily on the basis of what?

Holtzman: Well, there were three articles of impeachment. The first article was one that, if you can think of an indictment, was more of a criminal indictment about the obstruction of justice. In other words, the cover-up that Nixon played a key role in—obstructing the Department of Justice, obstructing the investigation of the Watergate break in, suborning perjury, and that kind of thing.

The second article of impeachment was about abuse of power. It didn't get into war making but the abuse of power related to, for example, misuse of federal agencies, getting the CIA [Central Intelligence Agency] to stop an FBI investigation, getting the IRS [Internal Revenue Service] to retaliate against people who objected to the war by doing audits. The third article of impeachment was for the president's obstruction of the impeachment inquiry by refusing to turn over documents and by providing misleading documents to the committee.

Then there were two other articles offered. One with regard to the secret bombing of Cambodia, which I drafted and I gave to Congressman John [J.] Conyers [Jr.] to introduce because he was much more senior than I was. I thought, to give the resolution some more gravitas, he should introduce it. Then there was another resolution introduced by Congressman Jack [B.] Brooks of Texas about emoluments that Nixon had obtained. It also did not pass.

Q: I'm interested hearing you talking about this because you seem to be talking about it primarily as a legal process, and yet I think it was more seen as a political process. I'm just wondering what your thoughts are on that?

Holtzman: It was a political process, but the reason that it worked was because it was done in a way that accorded with what the constitutional framework was so that it met legal standards for fairness—procedural fairness, evidentiary fairness, and other kinds of fairness. It wasn't done, and the country didn't see it being done, as a political matter. If it had, we never would have gotten impeachment passed. As it was, it was a bipartisan process. The Republicans never would have gone along if they felt it was unfair. No one ever accused us of procedural unfairness because we took that issue out.

Peter [W.] Rodino [Jr.] was a brilliant strategist in this regard and understood that by bending over backwards and giving the president every procedural right that he wanted, we would take that issue out, that nobody would accuse us of being unfair, and they never did. For example, the president wanted to bring these witnesses. We heard these witnesses. The president wanted to

submit a hundred page brief. We let him submit the brief. I don't know if it was a hundred pages, but a long brief. The president wanted to question the witnesses we had. We let his lawyers question.

It was a very fair process. While it was a political process, because it was a constitutional process, but it still met, I would say, legal standards or constitutional standards in terms of what the committee voted for. There was huge public support for what we did because it was done in a way that people felt was fair and was grounded in the Constitution. They understood what the arguments were. It wasn't petty. It was very serious. It was bipartisan.

I think maybe it was political in the broadest and best sense of the word, but definitely not political on a partisan sense of the word or in a narrow sense of the word. This is protecting our democracy. I believe that that was what the people on the committee who voted for impeachment believed they were doing. We were protecting the constitutional system against grave, serious, and systematic abuses of power.

Q: Just in looking forward to your impeachment effort for [George W.] Bush, one of the things that strikes me about what you are talking about, you have a lot of experience with abuse of power within government.

Holtzman: That is what we are talking about.

Q: Yes. Of course, then you were also were a part of government. I'm wondering how you saw government in general and your role within that government—government as a thing that is at least potentially corrupt?

Holtzman: Well, government can be corrupt and it can provide a remedy. Just because there are abusive or crooked people doesn't mean that everybody is abusive and crooked. I gave you the best example from the South. The government in the South was ruled by force and violence. Blacks were kept in their place really through the barrel of a gun, which was enforced by the judicial system and the law enforcement system and the government system. It was the government ultimately that undid it when the federal government stepped in and said, "No more," and when the federal courts stepped in and said, "No more."

So yes, government can be a force for evil and it can be a force for good. I don't really get the question. I'm sorry.

Q: Well, I guess I wanted you to speak as someone who has been inside the whole process, who has seen how government works. I wanted to talk a little bit about the ways in which government can work to be a positive force and to be negative.

Holtzman: I don't think I'm overstating it, but I think the people who voted for the impeachment—I'm not going to impugn the motives of those who voted against it—but those who voted for it, I believe, felt that what was at stake was not an election. This is not a vote to raise or reduce taxes or a foreign aid bill or something like that, or a bridge in your district. What

we were talking about was saving the constitutional system of our government. People really rose to deal with that challenge. I think that was one of the reasons that the country responded as it did and also the reason that our colleagues responded to us. We became heroes because people saw that we really did the right thing by America and by our Constitution. Members of Congress don't often get those kinds of accolades, that's for sure.

I think it was very hard for some members of the House Judiciary Committee. For me, in my district, it wasn't so hard. But particularly Southern Democrats and some Republicans had districts where Nixon had won in a landslide with overwhelming numbers, bigger than Bush had ever won, by huge landslide votes. For them, then to go against their constituents was an act of courage, but they did what they thought was right. You have to give them a lot of credit for that because I think, as I said to you, what I believe they felt was at stake was the constitutional system of the country.

Q: Maybe it would be appropriate to take a little bit of a leap forward to talk about the impeachment proceedings against [William J.] Clinton. How would you contrast the two?

Holtzman: I thought that effort against Clinton was disgraceful. They diminished impeachment. They trivialized impeachment. Clinton didn't engage in an abuse of governmental power, which is what impeachment is designed to protect against—a president who is in power, who abuses the power of his office, vis-à-vis the people of the United States. He might have abused his relationship with this young woman. That's a different story, but he didn't use the power of his office to do that. He didn't use the power of his office to do anything. To impeach him for that

was ridiculous. The country thought it was ridiculous. It was completely partisan. It was totally a contrast to what happened with President Nixon and how we handled it. The proceeding was not fair. It was very sad to see what we had done vis-à-vis Nixon turned on its head.

We were very conscious, by the way, when we undertook the impeachment of Richard Nixon, of the precedent that was before us, which was Andrew Johnson, just about one hundred years before. That was also a partisan process. It left a bad taste in people's mouths for almost a hundred years because people saw that the process was not being done fairly. The issues were not abuse of power in the same way that it was with regard to Nixon, or that happened with President Bush. Impeachment became toxic or radioactive. A bad impeachment may have a half-life longer than radioactive iodine. I don't know.

Q: I wish that a good impeachment had a more enduring effect, but alas, it did not.

Holtzman: Well, people forgot. They had no idea. They didn't understand it at all.

Q: Right. Well, I think that we live in a very different era too, alas. I want to get to that, but I want to take one more step backward before we go forward again. I'd like you to talk a little bit about pursuing Nazi war criminals, because that strikes me as perhaps also being something in your background that is relevant to your effort in regard to George Bush.

Holtzman: Well, this is also an issue of pursuit of justice. As it turned out, there were various forces protecting Nazi war criminals because they were part of the political Cold War apparatus of the country. I didn't understand that at the time I first got involved.

Q: Could you tell the story of when that man first came to you to tell you about the list?

Holtzman: I was elected to Congress in November 1972 and I took office in January 1973. I don't remember now if this was later in 1973 or early 1974. Somebody came to see me in my office in Washington who was involved somehow in immigration matters. I don't think he was an employee of the U.S. government, but he might have been. I don't remember now. He was an Armenian man—at least he had an Armenian name. It sounded to me like an Armenian name. I didn't ask his nationality. He said to me, "I want to talk to you because the U.S. government has a list of Nazi war criminals living in United States."

My first reaction was that he had to be crazy, but he didn't look crazy. He was respectably dressed and he behaved normally, and he didn't talk about laser beams. It was impossible for me to believe it because the U.S. fought [Adolf] Hitler in World War II. Why would there be Nazi war criminals living in the United States? If they were here, why would we not be doing something about it? So it made no sense to me. I couldn't really understand how that could happen. I said to myself he must be mistaken. This cannot really be true. He seemed to be serious enough and responsible enough, and the allegation is just not something you could easily forget.

There was a hearing sometime in early 1974 of the immigration subcommittee. I was on the immigration subcommittee. We would have hearings regularly with the administration officials that we were dealing with, so the commissioner of immigration came before the subcommittee at a hearing. My turn came to ask a question and I said, "Is it true that there is a list of Nazi war criminals living in the United States?" fully expecting him to answer, "No." His answer was, "Yes." I almost fell off my chair. I said to myself, "What?" So I said, "Okay, well, what are you doing about this list?" Then I got a bureaucratic smokescreen.

I said, "I want to see these files." I had no idea if I was entitled to see the files, but I said, "I want to see the files of these people." For some reason they were in New York. On one of my next trips to New York City, when I was returning to my district, I went and made an appointment to see these files at the immigration service. I started to go through them one by one. I didn't go through all of them. There were about fifty files there. I only went through about ten, maybe even less, fewer than ten.

The start of the first file said, "John Smith. The allegation against John Smith is that he was a police chief in some town in Latvia. He is accused of rounding up fifty Jews and shooting them." That was the allegation, and then there was the action taken. The action taken was "Immigration service went to visit John Smith and knocked on the door and asked if John Smith was there. John Smith said, 'Yes.' The question was, 'How are you feeling Mr. Smith, and how is your health?' 'My health is fine.' 'Thank you very much, Mr. Smith. Bye.'" The second file was exactly the same thing, and the third file, and the fourth file. I said, "This is absurd." So I realized that the—

Q: There was no rationale for asking questions like that within the files?

Holtzman: I think they were hoping that they would die. I have no idea why the Immigration Service asked them those questions. I didn't care why they asked them those questions because it was clear they were not doing any serious investigation whatsoever of the serious allegations against these people.

I held a press conference in which I exposed this issue and called for action. Ultimately, we got what I called for, which was strengthening the laws on deportation of Nazi war criminals in the United States and a special unit with the expertise, and the ability, and the mission to track these people down and bring them to justice. Bringing them to justice didn't mean trying them in the United States; we couldn't try them for crimes they committed during World War II because that would violate the *ex post facto* clause of the Constitution. But we could deport them or extradite them to countries where they could stand trial.

Q: How many did you ultimately find were living in the United States?

Holtzman: Well, the special unit brought proceedings against more than one hundred Nazi war criminals. Most of those cases were won. In some cases, the people turned out to be too old for action to be taken against them in the sense that they couldn't be deported, but a significant number of them were sent abroad. Some stood trial. Some were executed. At least one was

executed in the Ukraine by the Soviet Union. On the other hand, several were sent abroad or went abroad to avoid trial verdicts against them and nothing ever happened to them abroad.

Q: You talked about how the government had allowed these people in intentionally. What were they using these people for?

Holtzman: Well, some of these people were allowed intentionally into the United States and some of them just lied their way in. During the Cold War, the United States government was willing to use any and every means against the Soviet Union, including Nazi war criminals. Some of these people came here and became heads of—or important figures in—anti-Soviet groups. Some of them were brought here and were involved in recruiting people to engage in acts of sabotage and so forth—espionage against the Soviet Union. Others were used by the FBI to inform against other Eastern European and Soviet émigrés. Nazi war criminals were used as part of the Cold War apparatus.

Q: Did the government—did the CIA, I guess—was it?

Holtzman: This was every agency. It was the FBI and the CIA.

Q: Did they seek out war criminals in particular? Or just looking for willing Germans?

Holtzman: The war criminals figured out an approach; the Nazis were not stupid, at least some of them. We know from a report that was done about Klaus [Nikolaus] Barbie that at the end of the

war the Nazis, particularly those who knew they were most in danger—I'm talking about members of the Gestapo or SS—decided that they were going to come to the British and Americans and offer their services, and call themselves anticommunist and ask to be part of that anticommunist effort. America said, "Great." That was what happened.

I was ultimately appointed later on by President Clinton to a federal panel that was responsible for overseeing the declassification of secret Nazi war crimes and Japanese war crimes documents in government hands. We ultimately declassified more than eight million pages of these documents. Most of them were intelligence documents; many of them were CIA documents. Well, most of them were counterintelligence corps from the military, but there were many, hundreds of thousands of CIA documents.

Ironically, one of the things we discovered was after World War II, the head of army intelligence for the Nazis on the eastern front decided that he was going to offer services to the United States. It was better that than having your head cut off. He was brought to America and he was debriefed and so forth. Of course, you have to stop and think. What happened on the eastern front? The Russians defeated the Germans. Do we want the guy who was chief of army intelligence to be our guy, our spy guy against the Russians? The Germans lost. Not only did they lose, but the German army on the eastern front was also involved in atrocities—atrocities against Jews, atrocities against gypsies, atrocities against communists, various atrocities. But still, he was our guy. He became our guy, chief of our intelligence operation in West Germany.

Whom did he hire in building up these operations but his pals from the German military? They had blood on their hands. “Our chief honcho,” Reinhard Gehlen—some U.S. officials said, “He didn’t have blood on his hands.” Well, if he didn’t have blood on his hands, he was certainly watching other people who were killing millions or directing other people, somehow or involved in that mass extermination. There is no question about in my mind. In any case, it turns out that one of his top deputies became a double agent. If you stop and think about it, it makes no sense because every one of these people who was involved in atrocities could be prosecuted for war crimes, and so were open to blackmail by the Russians. That never occurred to the United States.

Reinhard Gehlen’s number two guy was in charge of counterintelligence. He had a Nazi past. He knew everything that was going on in NATO [North Atlantic Treaty Organization], all the stuff that was going on in Europe. He was telling the Russians about it. Maybe that was a good thing, because if the Russians knew all the things we were doing, then they would not get too scared by all the saber rattling. Maybe it actually helped to avert war, I don’t know. But you stop and think that the consequence of using Nazi war criminals was that they were open to blackmail. Aside from the lack of morality of using them, why would you want to use people who were open to blackmail?

Q: The whole effort sounds insane to me, I have to say.

Holtzman: Yes, it was one of our finest moments.

Q: I am wondering if you could tell the story about Karl Linnas, who was on the verge and was supposed to be deported and the Reagan administration tried to stop it? Could you talk about that quickly?

Holtzman: Was it Linnas? One of them.

Q: Let's see if I've got my notes here.

Holtzman: If you have your notes.

Q: Where is it? Here we go. It's not in the questions. Where is it?

Holtzman: Yes, and when the CIA did an assessment, a damage assessment, that was in the late 1950s. That's when they first figured out that maybe, "Whoops, using Nazi war criminals created a security risk." The level—

Q: It's amazing incompetence.

Holtzman: —of stupid is just staggering.

Q: Of course, this takes us again to Guantánamo. It was Karl Linnas.

Holtzman: Well whoever it was, I think he was going to be deported to Estonia?

Q: Estonia.

Holtzman: Estonia. The Reagan administration used to call the Soviet Union the evil empire, and was very upset about the fact that the U.S. government would be sending Linnas to the Soviet Union. They decided they were going to—I think we were still pals with [Manuel A.] Noriega at that time. Some genius in the Justice Department called up Panama and said, “Would you take Linnas?” They didn’t want to send this man to the Soviet Union to be put on trial for Nazi war crimes. Of course it was quite offensive that Mr. Linnas would live out his days relaxing under some palm trees in Panama. Linnas, by the way, was accused of being a top official at a concentration camp in Estonia where he personally shot Jews at the edge of a ditch, killing them personally, as well as giving orders for their killing. His case went up to the U.S. Supreme Court, so it’s not Liz Holtzman making the accusation. I think he was a citizen. Was his citizenship removed? I can’t remember now.

Q: I don’t remember that.

Holtzman: Anyway, I think [Rudolph W. L.] Giuliani also may have argued the case before.

Q: Really? Interesting.

Holtzman: Yes.

Q: And argued in favor of his deportation?

Holtzman: Yes, when he was U.S. Attorney. The Justice Department, realizing that they could not engage in this tactic of sending Linnas to Panama when everybody was paying attention, picked the first day of Passover to try to sneak him out of this country, when these Jews would be observing the holiday. Certainly religious Jews and many other Jews would be observing the holiday and would not be in their offices to hear this news. I remember early that morning I had to make a quick stop at my office—I was district attorney—to pick up some papers for something. I was just walking into my office and I was about to walk out. The phone rang. Somebody from Washington was calling me to tip me off to the fact that Linnas was going to be put on a plane that afternoon to Panama.

Well, the question was how to alert people to this when no one was in the office. We did a good job of stirring up quite a hornet's nest. Ultimately, we got a call by twelve o'clock from the Panamanian embassy that they were not going to take Linnas. But we were on our way down to Washington, D.C. We foiled this effort to prevent justice from being done with regard to Linnas. He was later put on a plane to Estonia.

Q: That is just such an astounding episode, that whole thing. Let me try and move forward now to get to the Bush impeachment effort.

Holtzman: I guess the point is I'm not afraid to tackle situations that seem impossible or difficult when we are talking about trying to do justice.

Q: That's good. That's what we're looking for. Can you connect the dots for me between your previous work in government and out of government as district attorney and comptroller, and the effort then to impeach George Bush? How did you see that develop? How do you see that developing?

Holtzman: I was not in favor of Bush's policies just as I was not in favor of Nixon's policies. But that didn't make me think that they should be impeached off the bat. With regard to Nixon, when impeachment proceedings began, I had to understand what the process was, what the Constitution permitted, and so forth, before I came to any conclusion about impeachment. By the time Bush was in office, I already knew what the constitutional framework was and what the Constitution permitted, and in fact demanded in my view. I was quite troubled from a constitutional point of view about Bush's deceptions respecting the Iraq War. It wasn't until I walked out of my house on a December morning—it was quite cold—and I picked up the newspaper on my stoop and saw the headline, which was something to the effect of, “Bush authorized illegal surveillance without a wiretap” that I knew in my gut that Bush had crossed the line and that his abuse of power might warrant impeachment.

Illegal surveillance was part of the articles of impeachment against Richard Nixon. It was part of the grounds for impeachment, I think the second article, because it was an abuse of process. It wasn't part of the cover-up, which was the first article of impeachment. This was the second article of impeachment. I couldn't believe it. I was astonished that Bush would do it. We had a clear precedent that this was illegal. It was an impeachable offense. It was wrong. I sat down and

I read more about it. I wrote an article for the *Nation* magazine about this and how it was an impeachable offense. Then, of course, it was not just the wiretapping but it was the torture and the authorization of torture in violation of U.S. laws, and the continuation of the Nixon mentality, which was—he said it afterwards, but it was the philosophy that controlled his behavior—the president, if he says it, it is the law. That is not what the framers ever intended. That is not what our constitutional system is about. Just because he's president, it's not the same as being Pope. It's not the same as being God. You are president. You are only president. You are president, but there are restrictions on what you can do.

My breath was taken away when I read that article. I couldn't believe it. I was rubbing my eyes, "This can't really be true." I didn't want to believe it. I don't ever like to see presidents engaging in conduct that is illegal, or improper, or impeachable. It's not something that makes me happy. I've said this many, many times, that when we voted for the Nixon impeachment, it was one of the most unpleasant tasks I ever had to engage in. Certainly nobody on the House Judiciary Committee felt any glee about that. Peter Rodino went back to his office and cried. This was not a happy moment for the country, in the sense we saw our president engage in abusive and illegal behavior. This was not a moment to gloat over or to take any pleasure in.

To see another president doing it, I thought, "How can this be? How can this happen? How could he not understand?" Of course the danger to the country was huge. Our democracy was at risk, and I believe that it was imperative for the country, the Congress, to act to protect the democratic system.

Q: When it came to mounting an impeachment effort against Bush, did you feel differently about that than you had with Nixon?

Holtzman: No. People said Bush's actions were worse, but I don't know if you can give gradations. Remember, with Nixon there were so many elements of misconduct that were the same as those of Bush; maybe the way they manifested themselves were different. Nixon also engaged in illegal war making activity. He had two sets of books about the bombing of Cambodia. One set of books had the real coordinates of where the bombs actually fell, which was in Cambodia, which Congress said you could not bomb. He ordered the bombing and hid this set of books Congress. He had another set of books that he made public. That was what he showed to Congress. That set of books showed that the bombing did not take place in Cambodia. That was fake.

That was just what President Bush did with regard to the war in Iraq. They just made up the claim of weapons of mass destruction. They lied to the American people, just the way they lied to the Congress. Well, the bombing of Cambodia actually was only the relatively limited part of the war in Vietnam so you could say, "Well, maybe that bombing didn't create as much damage as the invasion of Iraq." As a result of the Cambodia bombing, at least according to the book written by William [H. H.] Shawcross, the Khmer Rouge came to power, which resulted in the deaths of a million Cambodians. I don't know that you could draw a direct line, but some people apparently could. But there was huge damage as a result of that bombing.

President Bush, deliberately and knowingly, with all his aides and minions, engaged in a lie to drive Americans into war. He scared us, using the tragedy of 9/11 to scare Americans into approving a war in Iraq, which had nothing to do with the tragedy of 9/11. It didn't even have the rationale that the war in Vietnam had, which I didn't believe in, but at least they had a rationale for it. There was no rationale that they—

Q: It was consistent with the policy.

Holtzman: It was consistent with their Cold War policy. In Vietnam, the U.S. government had a domino theory. The domino theory was absurd, but that was their theory and they all believed in it. But apparently nobody at the top believed in the weapons of mass destruction threat because there was no urgency in starting the war. The timing for the “marketing plan” for the war in Iraq was after Labor Day and the war didn't start for another half a year. “Well, if there is such a danger to the United States that we have got to go after them right now, what are we waiting for?” “No, we have to do it after Labor Day because you don't roll out a marketing plan in August.” The cynicism of it was appalling.

I remember people saying to me, “The president will never lie.” I said, “Excuse me, I was there during Watergate. Presidents do lie, sadly.” I think that is also a part of it, a kind of naiveté on the part of the American people, despite Watergate. Maybe it's because Watergate is so remote. People don't study it. They have no memory of it. Many millions of Americans have no memory of it. It would be inconceivable to them that the president would say something is dangerous to us if it were not.

Q: Of course, there are two big differences. One is the bombing in Cambodia, of course, which was illegal. But in Iraq, more bombs have been dropped in Iraq than in the entire of World War II. It's just a simply massive effort. The whole war was gigantic. So it is, in many ways, of a different magnitude, I would think, than Nixon's.

Holtzman: Right. As I said, the Cambodian bombing was only part of a war making effort—the Vietnam War—that was already underway. In Iraq, we started from scratch and went into a country in violation, I believe, of our international treaties and in violation of our own laws. I think that what the president did was to defraud the Congress, to defraud the American people, and to commit crimes in the process, as well as impeachable offenses.

The reason for limiting the president's war making powers and making Congress a partner in the process is because the framers of the Constitution were very smart guys. It was guys only, but they were still smart. They were also students of history and they understood that one of the trademarks of a monarch, of a despot, was to go into wars with no real reason to do that, to show off macho. They wanted to make sure that there were real checks on a president's war making powers because they understood that wars—even though they certainly were not wimps—all of them had fought in the Revolutionary War and they were prepared to take up arms. It wasn't that they were pacifists, but they understood the costs of war, maybe because they had fought the Revolutionary War.

Q: They knew what a war was.

Holtzman: They knew people died. You had to raise taxes to pay for it. People suffered as a result. War had terrible consequences. They wanted to make sure that the country didn't go into war lightly. Two heads were better than one, and they also had different interests. The president only gets elected every four years. The House of Representatives gets elected every two years. They have to go back and explain to the constituents why people died, why taxes were raised to pay for the war. So there's got to be a good reason. The framers thought that they built into the checks and balances system, checks on presidential macho war making, unnecessary war making. They knew it from history that executive war making was going to be a problem.

The framers said to the president, "You are commander in chief of armies and navies," but they gave to the Congress the power to create the army, to raise the army, to raise the taxes, to make the rules for warfare, among other things, and the laws that are necessary and proper to carry out these powers. We didn't have a standing army at that time, so you couldn't get an army into existence unless Congress said you could have troops. One of the first things George Washington said was, "I need troops to fight the Indians." Well, where was he going to get the troops from? You had to go to Congress and say, "This is what I need." Congress could say, "Well, maybe we do need it, maybe we don't need it." At least we had some dialogue about it. The framers thought there would be a check and balance.

Well, if you go to Congress and you lie about the danger, then you subvert this process of checks and balances. Then there cannot be a dialogue because you have made up a story about the need to go to war. Congress can either believe it or not believe it. The president sends in his chief of

staff, he sends military people, he sends his CIA people, and he sends intelligence, this and that and so forth. They cooked up the paper and some of the documents that they showed to the public. They made a summary of one of his important presidential briefings, which was not really a summary. It was very misleading and inaccurate and so forth.

They just lied to bamboozle the Congress, which they did, and the American people. They created the impression there was going to be nuclear war, mushroom cloud. They created the impression that Saddam Hussein had weapons of mass destruction, including nuclear weapons. That he was in cahoots with Al-Qaeda. They mentioned Saddam's name with Al-Qaeda constantly, so people thought that Saddam Hussein was responsible for the bombing of 9/11. I think the statistics were huge, seventy percent, I don't remember them exactly. Well over fifty percent of the American people thought that Saddam Hussein was responsible for 9/11. That was why we were attacking Iraq.

Q: It didn't make sense any other way.

Holtzman: Of course it didn't make sense any other way. The president and his team knew that without the conflation of Saddam Hussein and Al-Qaeda and Osama bin Laden, and the threats of nuclear warfare, the American people would never have gone to war in Iraq. Here you have lying, you have subversion of the constitutional separation of powers for the purpose—I still don't know and I don't think anybody really knows, to this day, why we went to Iraq—to start a war which cost the American people more than a trillion dollars, four thousand dead, more than four thousand Americans dead, and countless numbers of Americans, tens of thousands of

Americans, who were physically wounded. Not to mention the tens of thousands more mentally wounded by the war. Not to mention the hundreds of thousands of Iraqis killed, wounded, and damaged.

The cost was humongous because the president subverted the constitutional system of checks and balances, abused the power of his office, and lied to the American people and the Congress to bring about a war. He abused the power of his office with regard to wiretapping. He has no power to wiretap without court approval. I was there. I voted on the FISA [Foreign Intelligence Surveillance Act] bill in 1978. Congress—as a result of Nixon's violation of the law in the Constitution with regard to wiretapping and with regard to the other wiretapping it subsequently discovered, illegal wiretapping by other agencies—passed this law, which is designed specifically to check a president's unilateral wiretapping. They created a special court. If you want to do foreign intelligence wiretapping, you go to secret court. You get secret permission. It's all secret. The court can accommodate you in every way. Bush said, “I don't have to obey that law. I'm above the law.”

That was another astonishing thing here. Just ignore the law. “I'm above the law.” Well, the president violates the law, refuses to obey the law—not once, not twice, not by neglect, not by mistake, but deliberately and intentionally more than forty times. That is another ground for impeachment. It was a ground for impeachment of Richard Nixon. It is a ground of impeachment for Bush. And the torture. We have laws against torture. Violating those laws is also an impeachable offense.

Q: That was what I was going to say. Maybe move on to Guantánamo, and how did that feature into your position?

Holtzman: Well, I'm not an expert on humanitarian law. At least I wasn't before I started to get into the issue of the impeachment of Bush, and certainly not the laws on torture. Fortunately, I never had to deal with that except through my work on Nazi war criminals, but they weren't so much engaged in torture as just extermination of people. I remember reading an article about this memo that Bush had received, written to him by [Alberto R.] Gonzales. I guess it was actually written by [David S.] Addington, [Richard B.] Cheney's right hand, saying that the Geneva Conventions were quaint and we didn't have to follow them. Well, I went and looked up the memo. I always believe in reading the documents. When I read the memo, I saw that that was argument number one, about how Geneva Conventions are quaint, and we don't have to obey them.

Q: Was quaint the word that was actually used?

Holtzman: I think so. But the second argument was what really got my attention. The second reason that was given to the President for not abiding by the Geneva Conventions, with regard to the war against Al-Qaeda and the Taliban, was because rejecting these Conventions would reduce the likelihood of prosecution under the War Crimes Act. If the U.S. adhered to the Geneva Conventions, the War Crimes Act would apply to the treatment of detainees and special prosecutors or independent counsels could mistakenly bring criminal cases for violating the War Crimes Act. Well, that got my attention immediately because I wrote the special prosecutor law.

I know that independent counsels and special prosecutors are not put in place for lower level government employees such as CIA agents. Independent counsels and special prosecutors are brought in to deal with the highest level officials, such as the president, the vice president, the director of the CIA, and certain cabinet officials. This law is not for the grunts. It's not for you and me, the special prosecutor. The special prosecutor is for the president and the very highest levels of the government.

I said, "What is this War Crimes Act that the president is worried about being prosecuted under, that this top aide, the president's top lawyer, is telling him there's a likelihood of prosecution under? We're only talking about the prosecution of top people. What is this law the memo is talking about?" I went and looked at the War Crimes Act, which I had never read before.

The War Crimes Act carries out the Geneva Conventions. It makes it a U.S. crime to engage in grave breaches of the Geneva Conventions. I had never read the Geneva Conventions before, so I read the Geneva Conventions. I said, "Now I know why the Bush White House is so worried about prosecution. Because they must be engaging in"—I think the standard was willful murder, torture, and cruel and inhuman treatment. I said, "Now I know." I said, "They are right to worry."

Of course, nobody was writing about this second point at that time. They were all so caught up in the idea that the Geneva Conventions were quaint. They couldn't get past that. But actually, the number two point was much more important to the White House than the number one point.

It reminded me of when I was part of a delegation to China during the Cultural Revolution. They always brought out the deputy of the committee to meet us. Whether it was the Communist Party committee or the government committee, the deputy was always the most important person. The number one person was the figurehead, but the number two person was the person who really had power. The number two reason here was clearly the most important reason, the more important reason, which was that the Bush White House was worried about prosecution.

As I did more and more research into Bush and his actions, it became quite clear that the White House was acutely sensitive to the issue of prosecution—acutely aware of it. That was one of the reasons that they dumped the Geneva Convention for the first time since World War II. The Geneva Conventions were ratified under Dwight D. Eisenhower and they were voluntarily put into effect by General [Douglas] MacArthur for the Korean War.

Generals, as opposed to people who never served in the military or ran away from military service, understand that the Geneva Conventions are not a matter of charity and goodwill on our part, but are designed to protect American soldiers. Even if the Conventions are not fully obeyed, they are at least some small handle we have at trying to protect our soldiers who are captured in battle. We had come out of World War II, where the Japanese committed terrible atrocities against American prisoners of war and where the Germans committed terrible atrocities against Russian prisoners of war and other prisoners of war. We were trying to end that era. Our own soldiers had been victims. Generals don't want to do away the Geneva Conventions. People who are engaged in military matters don't want to do away with Geneva Conventions. If you worry

about being prosecuted under the War Crimes Act for violations of the Geneva Conventions, you definitely want to get rid of the Geneva Conventions.

Q: Did you look into the whole emergence of the policy of torture? Because of course, that is something that a lot of military officials had completely thought was useless.

Holtzman: Look, I was a prosecutor. We had to prosecute nine hundred murders about every year that I was DA [district attorney] in Brooklyn. I was DA for eight years, so that's more murders than we had to deal with at 9/11, or more deaths. Nobody could beat suspects in these cases, could torture them, could deprive them of food, or could put them in stress positions. You couldn't use violence. You had to use your brain. When police couldn't beat confessions out of people in the United States, they had to substitute brain power for brawn.

Amazingly, we got a lot of confessions from people. In fact, we had hundreds and hundreds of people voluntarily giving confessions. We used to have a big clock so you could see that the film was not edited. You had an assistant district attorney present. The person who had been arrested would be questioned about the crime on video and they would make a confession. We had hundreds and hundreds of these. It's not uncommon. If you can't use violence, you figure out other ways. The police, obviously, can't break every case. They can't secure a confession in every case, but they become very adept at questioning. Certainly you had FBI agents who were extremely adept at questioning. In fact, that was how they were able to find out that KSM [Khalid Sheikh Mohammed] was the top figure in Al-Qaeda. It wasn't through torture. There was the initial questioning by the FBI of somebody they had picked up in Afghanistan. The FBI

said, "We're making a lot of progress." The CIA said, "Get out of the way. We're going to do it our way," which was, instead of being nice to people, beat them up, and torture them, and mistreat them.

Q: That was the policy before the Bush administration?

Holtzman: No. No, the torture was the policy the Bush administration put into place.

Q: I was just wondering if what you were saying implied that there had been some sort of history within the CIA or some part of CIA culture.

Holtzman: I don't know about the history of the CIA. All I can say is that the CIA is not an agency that understands about questioning. The FBI has to question just like the police department. I mean, you wouldn't send Liz Holtzman if somebody had been taken hostage. I'm not trained in that. You have police officers who are very carefully, carefully trained. They know how to deal with hostage situations. Generally, people don't get killed when you have really trained, professional cops handling hostage situations. They know how to deal with these situations. If somebody wants to commit suicide, wants to jump off the Brooklyn Bridge, they have police officers who are trained in that. You have detectives who are trained and experienced after questioning hundreds, and hundreds, and hundreds, maybe thousands, of people. They know how to do it. They have a feel for it. They are experts, and they are professionals.

The CIA is not an interrogation agency. They don't have that expertise. They had to hire people to do the detainee interrogations. They didn't even know who to hire. They got some psychologist who said, "Oh, let's use the techniques that the North Koreans used on Americans." Huh? Those techniques were not designed to extract truthful information, which is what we needed to prevent another 9/11 attack. Those North Korean interrogations were designed to extract false confessions. The CIA had no expertise in interrogation, but they were given the lead role in dealing with getting information from people who had been arrested, or apprehended, in Afghanistan, Iraq, and elsewhere. Of course, they didn't know what they were doing.

The consequence was that they decided they would use force, violence, and techniques used by Nazis—Nazis, through the Soviets, through the Chinese Communists, through the North Koreans, and now the U.S. was adopting these techniques. Just think of the provenance.

Q: That's horrible.

Holtzman: It is horrible. Torture violates our laws, the War Crimes Act. It violates the Anti-Torture Act. The president, nonetheless, ordered it. He tried to get around the laws by getting these fake opinions from the Justice Department and by purporting not to recognize the Geneva Conventions—fake opinions that the Torture Act did not apply. We are paying a terrible price for it.

Q: Oh my God, of course.

Holtzman: A terrible price for it. How many Americans died as a result of the use of torture?

And what did we get from the torture? It's like using the Nazi war criminals.

Q: Exactly. Which is what the CIA also did, right?

Holtzman: Well, it wasn't just the CIA; it was its predecessor agency as well.

Q: It's staggering. We could talk about that, but this is your story. I'm curious, though, when you began your effort to impeach Bush, what were your objectives? In particular, I'm wondering if you would qualify your effort as a success if Bush were impeached? Or did you have other objectives as well?

Holtzman: Well, my objective was to get the Congress to act on this, to educate the American people that an impeachment inquiry was an option, and to educate the American people first that Bush's actions were impeachable offenses and that there was a remedy for his abuses of power and violations of the law. There was nothing that Bush did that the framers of the Constitution didn't anticipate that a president would do. They were aware we would have some very bad people in the White House who would abuse power. They didn't know exactly how, but they knew there would be those who were going to abuse power. The framers created a mechanism to deal with these abuses, namely, impeachment. We had done it in a way that made the country proud once before during Watergate, and I believed it could be done again. That was really my purpose.

It wasn't easy to educate the American people because you have a different media today than we had then. Media, when I was in Congress, was interested in finding the truth. The media today is a little bit more interested in just being a gospel choir for a president or the amen corner. That is a problem. Secondly, Congress is very different from the way it was then. Everything today is polling. Everything today is the political outcome. You have to know what's going to happen before you start.

When Congress started the impeachment process in 1973, it did so not because Congress wanted it, but the American people said, "This is enough." President Nixon had the special prosecutor fired because he had subpoenaed presidential tapes. The attorney general of the United States had been ordered to fire the special prosecutor, and the attorney general refused and resigned. The deputy attorney general was then asked to fire the special prosecutor and he, too, refused and resigned. It was called the Saturday Night Massacre. The American people said, "We're not a banana republic, and the president has to obey the law. There is a subpoena. The president is going to obey the law. Congress, you better do something about this."

Congress took action, but nobody took a poll. Nobody said, "Oh, if we start an impeachment proceeding, how many people are for it? How many people are against it? Do we have a nose count in the House? Do we have a nose count in the Senate?" They said, "This is what the Constitution requires. Let's start the process in a way that's responsible and that's fair." That's what we did. Nobody did a poll that I've ever seen or that I knew of. Nobody ever counted the votes in the Senate. Nobody ever counted the votes in the House. Nobody ever counted the votes on the committee before we got started. No one asked me what my vote was going to be.

Today, you don't do anything unless you know what the end result is. It's like a trial. You would never take someone to trial and you never prosecuted a case unless you knew the jury was going to convict. Sometimes the juries don't convict. The prosecutor hopes the juries will convict, hopes the evidence is strong enough, hopes he or she has put on a good case. But sometimes the juries don't convict. If you always know the outcome, what's the point? It's like a trial. A trial educates the jury. An impeachment process, if it's done properly and carried out not in a partisan way but for purposes of protecting the constitutional system of government, should educate the country about the Constitution, what the president has done that is wrong, and what the remedy is. That's how it works and how it should work. If the public doesn't support it, it's never going to work.

You have to have sufficient reasons, and good reasons, and a fair process. That's what happened in Watergate and with President Nixon. But everybody was too afraid to trust the American people with democracy on this. The Congress was afraid. Media was afraid. Impeachment, they forgot all about Nixon. They all were caught up in what happened with Bill Clinton. That was a big problem too.

[END OF SESSION]

3PM

Session Two

Interviewee: Elizabeth Holtzman

Location: New York, N.Y.

Interviewer: Stephen O'Connor

Date: May 9, 2011

Q: This is Stephen O'Connor interviewing Elizabeth Holtzman on May 9, 2011.

Again, as I was saying, why don't we start with the inception for your idea of the impeachment effort? And just, if you can, take me forward through it chronologically, just telling the story as it happened.

Holtzman: Well, the actual genesis for my idea that he should be impeached was, as I had previously described, picking up a newspaper on a December morning and seeing the headline that Bush had authorized warrantless wiretaps. This was what President Nixon had done. It was part of the grounds for the vote for his impeachment by the House Judiciary Committee. I thought there were grounds. Actually, after that, I spoke with somebody who had worked with me during the impeachment and was a very fine, good, thoughtful lawyer. His reaction was that there are grounds.

I had actually conceived of the possibility of impeachment before. I can't remember now whether it was because of the torture or just the lies in connection with the war. But it seemed to me that even before I had read about the warrantless wiretaps that I had been considering the possibility of impeachment. I had spoken with this fellow and he said, "Liz, it's just not going to

fly and no one's going to believe there are grounds." I don't remember the exact words he used, but they were quite discouraging.

My reaction, of course, was very strong about impeachment after reading the *New York Times* story. I called him and his reaction was equally strong. He's a much more pragmatic person than I am. He said, "No, I think now that there are serious grounds and that the public can be persuaded, and that even though people may not agree, they can't say this is frivolous." After that, I was just thinking about my next steps. Then the editor of the *Nation* magazine called me out of the blue, saying, "Liz, would you write a piece about impeachment?" I said, "Yes, I would."

Q: Had he heard about your—?

Holtzman: Katrina [vanden Heuvel]? No, I guess her response to seeing the newspaper article was to call me. I immediately said yes. That forced me to sit down and do some more research and put my thoughts on paper. After that, it was a very well received article. The *Nation* had proposed it for a prize. I decided to write a book based on the article. So I did that with Cynthia [L.] Cooper, who used to work for me and is a very able writer. She's also a lawyer. We wrote this book, which was published by Nation Books in September or late August 2006.

Q: And how long did it take you to write?

Holtzman: I'm not sure when we actually got started. I don't remember the month.

Q: No problem. And so when the book was published, what happened?

Holtzman: It got an excellent review in the *San Francisco Chronicle Book Review*. For the most part, nobody else wanted to review it. The book sold. I don't have the exact numbers, but in addition to our advance, we got royalty payments. The publisher made back its money. I would not say it was a munificent advance, but still it was an advance. I did a lot of speaking in connection with that book and also in connection with the prior *Nation* article. I was on radio programs; I was on some television programs. In fact, when there were efforts, in some of the states, to start state impeachment activities—in essence resolutions calling on U.S. Congress to enact impeachment—they often asked me to appear, to speak, and to be connected with those activities. I tried to be as helpful as I could, but I didn't travel out to various parts of the country.

There was really, I would say, a lot of grassroots support from the idea of impeachment. I couldn't leave my job and there was nobody else willing to undertake the effort to create a national movement. It didn't happen. In addition, the fact was that there was, I would say, opposition to the idea of impeachment. Well, that's what I heard, but I think there was opposition from some of the ranks even in the Democratic Party.

Q: Which states undertook initiatives?

Holtzman: I think Maine. I'm not one hundred percent sure anymore of the states. I think possibly New Hampshire, Maine, and there was a state in the Southwest, maybe New Mexico or

Arizona. There was a state in the Northwest, Oregon. I think Oregon, or maybe the state of Washington. I was contacted by grassroots movements in other states as well. People were very interested in it and wanted to understand how this could happen. Remember, most people had in mind the Clinton impeachment, which had happened not too long before. And many Americans hadn't even been born during Watergate and had no idea what it was about. You had to educate people about the Constitution, the grounds for impeachment under the Constitution, and how President Bush's activities fit within those grounds.

Q: Did you get a sense that the Clinton impeachment proceedings had kind of degraded the whole idea of impeachment and made it seem just partisan?

Holtzman: Yes. It made it seem absurd. Yes, it degraded the concept and became a huge barrier to people's remembering Watergate. You had an image in the past and then you had this much bigger image blotting it out, which is what happened. The Clinton impeachment effort blotted out the history of the Nixon impeachment. It became very difficult to get more establishment people to think about it. The thing that was so troubling about it too was that people in Congress, their mentality about it was so changed. They weren't even willing to try impeachment, because they said, "Well, we don't have the votes in the Senate."

Well, as I had mentioned earlier, when we started the impeachment process against Richard Nixon, there wasn't a poll of the House Judiciary Committee, much less of the House or the U.S. Senate. I don't think when we started that that anybody knew that there were the votes. We just

did what had to be done, just like a trial. Do you know the outcome before you try somebody?

You hope you're going to win, but you don't for sure know.

Q: Of course.

Holtzman: That's true for prosecutors. It's true for the defense. Nobody knows, or can predict for sure what the outcome will be. They kept saying, "Well, we don't have the votes, so therefore we can't start." They utterly failed to understand that a process that's fair can also educate the American people and the Congress. They were not prepared to accept that. We're living in a different age now where people are not educated, they have an opinion. That's what polling is all about. So you try to meet people's expectations as opposed to trying to lead them and persuade them.

Q: I deal with this all the time in my teaching with students who don't have this idea that opinions should be anchored in fact in any way. It's all opinion.

Holtzman: That what?

Q: That opinion should be anchored in fact. It's all just spouting an emotion. They don't believe anybody's opinion. They don't believe what anybody says, which is really disturbing, but that's another story.

Did you speak to anybody in Congress directly about this?

Holtzman: I had a few conversations with people. I will not mention who they were, but basically, they were really not receptive at all.

Q: And the main thing they said was that we don't have the votes?

Holtzman: In the Senate.

Q: In the Senate.

Holtzman: Remember, Democrats controlled the House at that point.

Q: Of course. Was there any thought about the upcoming election at that point? Did that enter into what they said?

Holtzman: No, I didn't hear that. I don't really know the reasons but what I heard was, "We don't have the votes in the Senate, so how can we undertake this?" And the American people won't be for it or people won't be for it. My reaction was, "Well, how do you know until you make a serious and fair effort?" But they were not willing to do that. I guess they thought it was not going to be politically feasible. And without a grassroots movement that was organized, Congress would feel no pressure. And so therefore, they were not going to do it.

Q: Can you say which groups were organizing grassroots movements?

Holtzman: There was nobody organizing grassroots movements. During the impeachment of Richard Nixon, there was at least one group with nationwide—I wouldn't say appeal, but with nationwide roots—the ACLU, that did take the impeachment seriously. They actually hired somebody I knew who had been involved with the civil rights movement. I didn't know him personally at the time, but he had been thrown out from Birmingham. He was a white man who had stood up against segregation, so he had to leave Birmingham, Alabama. And he was hired by the ACLU to be their chief lobbyist on the impeachment of Richard Nixon. One of his functions was to help educate members of the Congress and their staff about impeachment and how it worked and why it was important. There was no group like that, which was willing to undertake this task at this time.

Q: Even the ACLU wouldn't do it?

Holtzman: No. It was not part of their mandate. They had a much narrower focus. In fact, one of the things that kind of astonished me was the variety of groups in the United States. There are groups against torture. There are groups against surveillance. There are groups interested in privacy. There are groups that are interested in civil liberties, but there is no group that is out there fighting for the Constitution when it doesn't necessarily implicate these issues.

Q: That's interesting.

Holtzman: Everybody had an extremely narrow focus. Actually, that came to light even more clearly during the consideration of the Military Commissions Act, one of the objectives of which was a way for President Bush to avoid being prosecuted. As you may remember, the way they had of dealing with the War Crimes Act—which made it a U.S. crime to submit somebody to cruel and inhuman treatment, and it applies to any national, including the president of the United States—was to say the Geneva Conventions did not apply to the Taliban and Al-Qaeda.

Well, in the spring of 2006, the Supreme Court ruled that the Geneva Conventions did apply. This was a big panic moment for the White House because once the Geneva Conventions applied, in their thinking, the War Crimes Act applied. That was very serious, really serious. They raced to revise the War Crimes Act, which they did. They did it in a brilliant way. This was a statute that created military commissions to try detainees.

They were proposing some outrageous things, like allowing torture testimony to come in and depriving people of proper defenses and so forth. I don't remember the details. Everybody focused on those controversial issues. The ACLU, all the various human rights and all those other groups were very focused on what was going to happen in the Military Commissions. What almost nobody focused on, although I wrote an article about this, was the fact that as part of this Military Commissions Act, the president and his team wiped out the War Crimes Act retroactively. There was no way for—or they tried, at least, to ensure there would be no way for them to be prosecuted under the War Crimes Act.

I don't think there has ever been another time in the history of the United States where liability under a criminal act has been wiped out retroactively. There was almost no comment in the press about this. There was almost no discussion about this. I'm not saying they shouldn't have focused on it, but everybody was focused on this big controversy of how these military commissions would run, ignoring the fact—in a way at least equally important—that a president of the United States was shielding himself from accountability under a criminal statute.

That was what happened. I think that the Constitutional provision for impeachment was exactly built for Bush and Cheney. In my opinion, they committed high crimes and misdemeanors. They abused the power of their office. They abused the separation of powers provisions with regard to taking the country into war. They abused their position of power by flouting the law that prohibited wiretapping in foreign intelligence matters without court approval. That was a law that grew out of Watergate. They committed an impeachable offense by engaging in torture in violation of federal laws. Very serious. These were not casual acts on the part of the administration. These were not even one time acts. This was a systematic effort to put themselves above the law. And so when we failed to hold people accountable for that, what kind of a country does that make us?

Q: Do you think that, actually, their retroactively rescinding the law would stand, if it were put to a legal test?

Holtzman: I don't know. We have such restrictive rules about standing. I'm not sure who would have the standing to challenge that. Congress was just as culpable. But the point I was making

about that was that there should have been organizations that were speaking up for the Constitution. They were not there.

Q: It's just amazing to me.

Holtzman: So it reveals a huge gap.

Q: I suppose all of this makes me think about what has been happening recently, in terms of the WikiLeaks papers about Guantánamo and then, of course, the killing of [Osama] bin Laden. How have these events shaped your thought about that aspect of our history, if they have at all?

Holtzman: Not much. The only point to be made is that some of those WikiLeaks cables show how President Bush made a serious effort to pressure other governments from holding him accountable. But to me, the most important thing is the rule of law. One of the important things that happened after Watergate, and when the country basically approved the Judiciary Committee's actions in voting for impeachment, an overwhelming majority of the American people determined that more important than a party, more important than a president, more important than politics, was to have the rule of law.

I think there was unanimity, a coming together, in terms of shared value about our Constitution. Remember, Nixon was elected in 1972, less than two years before the Judiciary Committee's impeachment vote, by an overwhelming majority of the American people. Still, they were prepared to reassess, and to understand, and to send a very clear signal that as important as the

president of the United States is, he—someday I hope she—is not more important than the Constitution. That is the rule of law that guides us. I think we have lost that sense that that is more important than any one person. I think, if we don't have accountability, if we don't have accountability for Bush, when will we ever have accountability? If the president can order people tortured on his own say so, why can't he order them to be killed on his own say so?

The issue about wiretapping is that Bush was saying we were wiretapping the baddies, but in Watergate, President Nixon was wiretapping the other political party. It's not just the baddies; it's these tools, misused, that create a danger to our democracy.

I don't fault the American public here because I don't think that they saw the option of impeachment or understood it. I think the press decided it was a joke and never really wrote about it. That's what happened. There were no organizations to break through that media cloud.

Q: I'm wondering what you think the legacy of this era will be? How will what has happened over the last decade affect the future?

Holtzman: I think that the legacy is not good. Congress has never, to this day, inquired into the origins of the Iraq War. To their credit, there have been two Senate inquiries that did a pretty good job, particularly the Senate Arms Services Committee, which examined the role of Defense Department and torture. That has never been done for the CIA, so we don't have any inquiry into what happened, in terms of them. We have no inquiry into the origins of the war, what President Bush knew and when he knew it, to use Senator Howard [H.] Baker [Jr.]'s famous formulation.

Nothing has been done about the wiretapping basically. There have been a few lawsuits, and even the lawsuits are hard to bring.

I think if you don't have high government officials held to the same standard as everybody else, then sooner or later, you're down the road to becoming a banana republic.

Q: That's what scares me. Or worse, because we are a much more powerful sort of entity.

Holtzman: The facts that have come out since I wrote my book I don't think in any way have undermined or lessened my conviction that there were substantial grounds warranting impeachment. Of course, you have to do an inquiry, a serious inquiry, and let the president make his defenses. I found nothing that would make me feel that his actions were lawful or justified—to the contrary.

Q: I thought your arguments were very clear and strong, and upsetting.

Holtzman: Other countries have undertaken some inquiries now. Holland did a major inquiry, led by one of its leading judges into the legality of the war. The same thing went on there as went on here. Well, first of all, the inquiry found that the war was illegal under international law. The inquiry also said that the parliament had been fooled and that the prime minister in Holland had abused the power of his office as well. I don't think they took any concrete action against the prime minister, but they did a very credible, very serious expose of what happened. England also

has undertaken what is called the Chilcot inquiry to examine the run up to the Iraq War. Where are we in the United States? It's "see no evil and hear no evil."

But this should have been done, and could have been done, at the time that Bush was in office to take advantage of what the Constitution provided us, which is a remedy for presidents who abuse the power of their office. If impeachment becomes a useless tool, then presidents will know that they can do what they want in the end and that there is no accountability, and there is no control, and that Congress is a wimp, that Congress will allow presidents to do whatever they want to do. That is not the system of checks and balances that our framers envisioned because the framers always were suspicious of power. They were suspicious of a president's power. They were suspicious of congressional power. They were suspicious of power at a national level, so they created a federal system so that states would have some powers, so there would be some dispersion of power in this country. They didn't want it centralized. They fought against a monarchy. Yet, slowly but surely, we are denigrating and going away from that understanding and finding ourselves in a situation, more and more, where it's the president *über alles*.

Q: The president and his campaign contributors. As you are talking, one other thing I noticed, both in our conversation last week and in your books, you talk a lot about optimism and your own optimism regarding the possibilities for political action and so forth. But this is all sounding very pessimistic, and I am wondering what your thoughts are?

Holtzman: I don't know that it's pessimistic, because I do believe that, with different circumstances, it's possible that the public can have more of an input. But maybe it can't. Maybe

times have changed so much since 1973 that that could never be reenacted. I don't know. Maybe what has happened is that it costs so much to run for office that the people who are elected, for the most part, are unwilling to challenge the powers that be. Maybe to raise that kind of money and to stay in office, you have to be a person who is really not going to rock the boat. Maybe that's one part of it.

National groups have had to narrow their focus for reasons that I don't understand. We don't have groups out there protecting the Constitution. Maybe the public can't have the kind of sway that it had during Watergate—and that it should have again.

Q: That's a discouraging proposition. Speaking of the people who are being elected and rocking the boat and so forth, I'm wondering what you think about the Obama administration, in regard to all these issues. In regard to Guantánamo, and to—

Holtzman: Well, that's not really the subject of this interview. I don't really want to go into that, if you don't mind.

Q: Alright. Well, maybe we should talk a little bit more about what you're doing now? I know, for instance, you were considering, at least reputedly considering, running for attorney general in New York and you decided against that. Can you talk a little bit about that?

Holtzman: Well, there was a vacancy in the attorney general's position because Andrew [M.] Cuomo was running for Governor. I took a poll, speaking of polls. It was almost like a love letter

from the people of the state to me. It was a very fine poll. It showed substantial name recognition on a statewide basis and substantial support. The problem is that I took it so late. The primary was in mid-September and this was mid-April. I wasn't really sure that, in such a short period of time, starting from scratch, I could put together the infrastructure of a campaign and raise all the money and win. I knew that if I had started three or four months earlier, that would have been a different story. That is what dissuaded me, so I ultimately decide not to run.

Q: Do you see yourself ever running for elected office again?

Holtzman: It's unlikely. But ever is a very definitive term. I don't know that I could go that far, but I don't think that that is likely.

Q: So what are you doing now then? Can you talk about what—?

Holtzman: Well, I practice law. I'm also writing another book about George W. Bush. It's a sequel to my first book, because I can't really get the idea of accountability out of my head, I guess. Beacon Press is going to be publishing the book, which is called *Cheating Justice*, and is about the extent to which George Bush can be prosecuted for his actions.

Q: Who is your editor there? Gayatri—I cannot remember her last name.

Holtzman: Helen.

Q: Yes. Helene Atwan. My wife has just had a book come out from Beacon. And when will that be coming out?

Holtzman: Probably in February, so in less than a year. That's why I have had a chance to review, reconsider. And impeachment was, and still is, in my view, the most appropriate remedy to use under the circumstances.

Q: But impeachment, now that he's out of office, is not a possibility.

Holtzman: Well, it's a theoretical possibility. But it's practically not a possibility. No one is going to opt for that. He's still receiving a pension. He's still receiving benefits from the United States. He still could serve in a position of honor for the United States, all of which would not be permissible if he were impeached now. Impeachment is still theoretically possible as a legal matter, but I don't advocate that because it's not practical.

Q: Are there any other legal consequences that Bush and Cheney and the whole gang could— could they, in fact, be jailed?

Holtzman: Well, they could be prosecuted here. There is a federal statute, not only the War Crimes Act, which prohibits the inhumane and cruel treatment of detainees, but there is also what I call the anti-torture statute, which makes it a federal crime to torture somebody outside the United States. There is no statute of limitations on that for some of the mistreatment of detainees they authorized. So, at some point, could he be prosecuted? Yes. Would he be

prosecuted? I don't know. Just look at what happened with [Augusto J. R.] Pinochet, who was the dictator for many, many years in Chile. He went to Europe for some medical treatment, to England. The Spanish magistrate sought to have him extradited, to stand trial, to be prosecuted. I don't think Bush is going to be able to go to Europe for some long period of time, or Cheney, or Rumsfeld, or any of them.

But could he be prosecuted, Pinochet? They waited for forty almost—was it forty years? No. Maybe. It was in the 1970s, so some thirty odd years before efforts were made to bring him to justice. By the time he went back to Chile, after what happened in England—he never was tried there—proceedings started in Chile against him. The foreign moves were triggers to get him prosecuted. I think in the end, no one could say that he was able just to thumb his nose because efforts, in fact, were made. Serious efforts were made, not only abroad, and not only in Spain. The House of Lords in England also said that he had no immunity and should be returned to Spain. There were efforts in Chile to bring him to justice. I think that it might take a very long time, but my optimism is that, at some point, they will be held accountable, Mr. Bush and Mr. Cheney.

Q: That would be great. So you're practicing law. What sort of law do you do here?

Holtzman: I do many different kinds of things. I do some litigation. I do government relations as my primary practice. I also do financial and corporate work. I do some estates work. I never know what is coming over the transom.

Q: So you're working on this book now. And do you have any other projects in the works? Or things you imagine doing?

Holtzman: Right now, no. But I'm sure that, as soon as this book is finished, I'll have quite a few projects.

Q: Good.

Holtzman: I've never written a book about the Nazi war criminals and my work on that. Maybe when I get finished with the book on Bush, I'll turn my attention to that.

Q: And then maybe now, in a way, this is an appropriate time to do a retrospective thing. One of the things I'm wondering about, what do you see as the most important moments of your career? For you personally, or in terms of history?

Holtzman: I don't know. The things that were important to me may not be the things that other people think are important. I think bringing the lawsuit against the bombing of Cambodia, or participating as a plaintiff in that lawsuit and drafting the article of impeachment on President Nixon and the secret bombing of Cambodia were important to me. Getting legislation that extended the ratification deadline for the Equal Rights Amendment was important to me. Beginning the work on Nazi war criminals was important to me.

Also, when I was out of Congress, I was invited to a conference in Jerusalem, a women's conference of Israeli and American women. I worked together with some people in Israel to help frame what ultimately became the creation of a major non-political, non-partisan women's group in Israel called the Israeli Women's Network that ultimately led to major improvements in the status of women in Israel. Those are some of the things that I think were important.

Q: I noticed you talked about getting started on the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group [IWG]. They issued the final report in 2007. Were you involved in that?

Holtzman: Yes. The IWG was a panel designed to oversee the declassification of U.S. secret documents on Nazi and Japanese war criminals. We oversaw the declassification of more than eight million pages of documents. The process continued after the IWG went out of business because some of the commitments that we got, for example from the CIA, could not be carried out in the time frame that the commission existed. The CIA ultimately produced the documents it was required to produce. There may have been some documents from the counterintelligence corps at the Department of Defense that could not be read, given the technology at that time, because they were so fragile and old. Maybe now that those documents are becoming available; they have been declassified. But they have not been accessible because they were too fragile. Maybe those are being made available now because of new technologies. Basically, that was very important work. It's a credit to the United States that it was done.

That is another measure of accountability, which is at least getting all the facts out so that people can understand what happened. There was a front page story today in the *New York Times* about how the German equivalent of the CIA is refusing to declassify its documents on [Adolf O.] Eichmann. Well, our documents on Eichmann were declassified, as well as other things.

It is very important, from the point of view of democracy, to be able to understand the bad things that have happened and take corrective action. If you do not, they fester, and they inform bad behavior in the future.

Q: I suppose, in a way, leads to one of the other questions I had been thinking of. There are different ways of phrasing it. The best way would be to think, what sort of advice would you give to someone who wanted to get into politics now, become politically involved in one way or another? What would you suggest they do? What do you think are the most important things?

Holtzman: There is no blueprint. If people want to do that, I think that's very important. I still think we need idealistic people who are willing to challenge the status quo and try to make this country work for all of its people and fight injustice. We need to do that. We need to have people who are willing to do that.

Q: And what do you think it takes most to be able to do that?

Holtzman: I don't know. First of all, someone who has those values, that is important. But being an effective politician requires more than just having good values. You have to be able to

communicate with constituents. You have to be able to raise money. You have to be able to prioritize. It is a complicated and difficult undertaking and requires a lot of energy and time. Of course, it's a great privilege to be in a position where you can do things to make this a better country.

Q: Is there anything that you would, now that you are looking back over your career, have done differently?

Holtzman: I can't really cry over spilled milk. You make decisions, under the circumstances, that you think are the best decisions and then you just go forward from them. That's how I tried to live my life.

Q: Let me just see. Well, I guess, actually, that takes me to the end. Is there anything that you would like to say? Anything? Anything you would like to add? Things that we have not discussed that you think are important?

Holtzman: We haven't really gotten into the details of the impeachable offenses of George W. Bush in the sense of what specifically did he do with regard to torture? And what specifically did he do with regard to wiretapping? And what specifically did he do with regard to the lies that drove us into the war? But that is a very long discussion. And people can read my book, which is a short, well-written book and gives them the answers pretty quickly.

Q: I completely agree. Well, I guess, maybe that would finish it then.

Holtzman: Good. Thank you very much. Thanks for your interest.

Q: Well, thank you so much.

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