

JAMES P. FLEISSNER

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Mercer Law School
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CURRENT POSITION

Professor of Law, Walter F. George School of Law, Mercer University
(member of the Mercer law faculty since 1994)

Courses: Criminal Law; Criminal Procedure: Constitutional Dimensions;
Criminal Procedure: The Litigation Process; Trial Practice; Evidence; Advanced
Criminal Trial Techniques; Great Trials Seminar; Introduction to Counseling;
Introduction to the Study of Law; Advanced Writing Group; Legal Analysis

Honors: Nine-time recipient of the Walter F. George Distinguished Faculty
Award, “in recognition of excellence in teaching at Mercer Law School, presented
annually to a member of the faculty by a vote of the senior class.” (1997, 1998,
1999, 2000, 2001, 2002, 2003, 2008, and 2009)

LEGAL EDUCATION

University of Chicago Law School (J.D. 1986)

Member, University of Chicago Law Review (1984-86);
Associate Editor (1985-86)

Research Assistant to Professor Albert Alschuler (May-December 1986)

COLLEGE EDUCATION

Marquette University (B.A. 1979, *summa cum laude*)

Elected to Phi Beta Kappa

GOVERNMENT SERVICE DURING LEAVE OF ABSENCE (January 2003-July 2005)

**Assistant United States Attorney, Northern District of Illinois,
United States Department of Justice**

Chief of Appeals, Criminal Division

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- Supervised all criminal appellate litigation of the office (over 100 annual appeals) before the United States Court of Appeals for the Seventh Circuit, including assigning attorneys from the Criminal Division to handle appeals, planning appellate strategy, editing briefs, supervising preparation for oral arguments, and acting as contact with the Appellate Section and the Office of the Solicitor General at Main Justice.
 - Served as general legal advisor to United States Attorney Patrick J. Fitzgerald and the office's 100 criminal prosecutors on issues arising in all phases of investigations and prosecutions.
 - Served on Appellate Chiefs Working Group of the Attorney General's Advisory Committee, which is comprised of appellate chiefs selected from each Circuit and meets quarterly to make policy recommendations to the AGAC.

Deputy Special Counsel

- Appointed in January 2004 by Special Counsel Patrick J. Fitzgerald, who, upon the recusal of the Attorney General, was delegated authority to investigate allegations that the identity of a CIA agent was improperly leaked to the press.
- Involved in all aspects of the Special Counsel investigation, including serving as lead counsel in litigation before the United States District Court, Court of Appeals for the D.C. Circuit, and U.S. Supreme Court concerning subpoenas issued to reporters and media entities.

CONTINUED GOVERNMENT SERVICE AFTER LEAVE (July 2005 - February 2009)

- Pursuant to 28 U.S.C. §543, appointed on July 1, 2005 as a Special Assistant United States Attorney for the Northern District of Illinois, allowing continued government service after returning to Mercer Law School from leave of absence.
- As Special AUSA, continued to work on the Special Counsel investigation and several other matters. As Deputy Special Counsel, participated in pretrial and post-trial proceedings in *United States v. I. Lewis Libby*.

OTHER PRACTICE EXPERIENCE DURING SERVICE ON MERCER FACULTY

- While serving on the Mercer faculty, accepted periodic appointments to represent indigent defendants in the federal appellate courts and consulted on various federal criminal cases. During 2007, served as consulting expert for the Office of the Comptroller of the Currency of the U.S. Department of the Treasury for *In re: Carlos Loumiet*, an enforcement action against an attorney alleging an inadequate outside investigation of irregularities at Hamilton Bank that eventually led to the bank's closure and over \$100 million in losses.
- **Senior Associate Independent Counsel, *United States v. Henry G. Cisneros*** (April 6, 1998- October 6, 2000) Appointed by Independent Counsel David M. Barrett. Involved in all aspects of the prosecution after the indictment of the former HUD Secretary, including motion practice, pre-trial hearings, briefing defendant's interlocutory appeal, trial preparation, and negotiation of eventual plea agreement.

PRIOR PRACTICE EXPERIENCE

- **Assistant United States Attorney, Northern District of Illinois, United States Department of Justice** (December 15, 1986-August 5, 1994)
 - **Chief, General Crimes Section, Criminal Division** (January 1994-August 1994) Responsible for supervision of six Deputy Chiefs and over 40 Assistant United States Attorneys handling criminal cases. Duties included advising the United States Attorney on office policies and administration.
 - **Deputy Chief, Criminal Receiving and Appellate Division** (March 1991-January 1994) Responsible for supervision and training of incoming attorneys, including consulting on investigative, trial and appellate strategy, and reviewing indictments, pleadings, and appellate briefs.
 - Trial counsel in 20 jury trials and author or supervisory editor of over 100 briefs filed in the United States Court of Appeals.
 - Involved in all aspects of criminal prosecutions, including coordination of investigations, grand jury practice, search warrants, preliminary and detention hearings, plea negotiations, motion practice, trials, sentencing under the federal guidelines, appeals, and collateral proceedings.

- Handled cases involving a wide range of federal statutes and interests, including RICO, fraud in the commodities and securities markets, bank fraud, mail/wire fraud, police and judicial corruption, tax evasion, arson, major narcotics distribution organizations, money laundering, civil rights violations, and the Classified Information Procedures Act.

- Directed investigations utilizing a variety of investigative techniques, including court ordered and consensual electronic surveillance, undercover operations, informants, cooperating defendant-witnesses, and immunized witnesses.

- Summer Associate, Baker & Botts, Houston, Texas (6 weeks, 1985); Porter & Clements, Houston, Texas (7 weeks, 1985).

- Intern, Office of the United States Attorney, Northern District of Illinois (September 1985-February 1986)

OTHER TEACHING EXPERIENCE

Adjunct Professor of Law, DePaul College of Law (Criminal Law, Spring 2004; Evidence, Summer 2004; Criminal Procedure, Fall 2004; Evidence, Spring 2005)

Adjunct Professor of Law, Northwestern University Law School (Spring 2004) (coached trial competition team)

Visiting Professor, Georgia State College of Law (Criminal Law, Spring 2002)

Adjunct Professor of Law, DePaul College of Law (1993-94) (taught trial competition teams)

Instructor, Emory University Law School Trial Techniques Program (1992-93) (taught one-week trial practice course)

Instructor, Attorney General's Advocacy Institute (1992-93) (taught one-week courses in trial practice and appellate practice)

Faculty member, The Kinkaid School, Houston, TX (1979-83) (secondary school teacher of history, political science, speech; director of debate program)

Assistant Director of Debate, Marquette High School, Milwaukee, WI (1975-79)

BAR ADMISSIONS

State Bar of Illinois

State Bar of Georgia

United States District Court, Middle District of Georgia

United States District Court, Northern District of Illinois (General & Trial Bar)

United States Court of Appeals for the Seventh Circuit

United States Court of Appeals for the Eleventh Circuit

United States Court of Appeals for the District of Columbia Circuit

United States Court of Appeals for the Second Circuit

Supreme Court of the United States

PROFESSIONAL RECOGNITION

1992 recipient of the Gregory C. Jones Award “for highest service to the United States Attorney’s Office,” Northern District of Illinois

Director of Department of Justice Executive Office of U.S. Attorney’s Award for Superior Performance (1991)

Department of Justice Special Achievement Award (1987, 1991, and 2004)

Department of Health and Human Services Inspector General’s Integrity Award (1990)

Certificates of Appreciation: Drug Enforcement Administration (1993 and 1994), United States Secret Service (1994), Federal Bureau of Investigation (1994)

PUBLICATIONS

“A Rescue Plan for the Justice Department, 92 Judicature 144 (2009)(written on behalf of the Editorial Board of Judicature)

“The Centennial History of the Court of Appeals of Georgia, 1906-2006” (Mercer University Press 2008, co-author)

“Destiny’s Rendezvous: Senator Walter F. George, FDR, and the ‘Purge Campaign’ of 1938,” (Mercer University Press, under contract).

“August 11, 1938: A Day in the Life of Senator Walter F. George,” 9 Journal of Southern Legal History 55 (2001)

“Constitutional Criminal Procedure,” 2000 Annual 11th Circuit Survey, 52 Mercer Law Review 1305 (2001) (with Sarah B. Mabery and Jeanne L. Wiggins)

“You Are History: Address to the Mercer Law School Class of 2000,” 8 Journal of Southern Legal History 201 (2000)

“Constitutional Criminal Procedure,” 1999 Annual 11th Circuit Survey, 51 Mercer Law Review 1089 (2000)(with Amy C. Reeder)

“Constitutional Criminal Procedure: A Two-Year Survey,” 1998 Annual 11th Circuit Survey, 50 Mercer Law Review 921 (1999)(with Jeffrey R. Harris)

“The Future of the Independent Counsel Statute: Confronting the Dilemma of Allocating the Power of Prosecutorial Discretion, ” 49 Mercer Law Review 427 (1998)

“The Case Against the Potential Expansion of the Good Faith Exception to Warrantless Searches and Seizures,” Vol. 24, No. 10, Search and Seizure Law Report (November 1997)

“Glide Path to an ‘Inclusionary Rule’: How Expansion of the Good Faith Exception Threatens to Fundamentally Change the Exclusionary Rule,” 48 Mercer Law Review 1023 (1997)

“Mastering Trial Objections: The Spin Control Method,” 20 American Journal of Trial Advocacy 591 (1997)

“Constitutional Criminal Procedure,” 1996 Annual 11th Circuit Survey, 48 Mercer Law Review 485 (1997)

“Bomb Trial Ploy Could Self-Destruct,” The National Law Journal, April 7, 1997, at A17.

“Sentencing Illegal Aliens Convicted of Reentry After Deportation: A Proposal for Simplified and Principled Sentencing,” 8 Federal Sentencing Reporter 264 (1996) (with James A. Shapiro)

“Criminal Law and Procedure: A Two Year Survey,” Annual Survey of Georgia Law, 48 Mercer Law Review 219 (1996)

“Together and Apart: Two Juries, One Trial,” The National Law Journal, October 28, 1996, at A21

“Constitutional Criminal Procedure,” 1995 Annual 11th Circuit Survey, 47 Mercer Law Review 765 (1996)

Testimony before the Judiciary Committee of the U.S. House of Representatives concerning the Comprehensive Antiterrorism Act of 1995 (June 12, 1995), Published in “International Terrorism: Threats and Responses,” Hearings on H.R. 1710 before Committee on the Judiciary, 104th Cong. 1st Sess. (1995)

“Federal Sentences for Aliens Convicted of Illegal Reentry Following Deportation: Who Needs the Aggravation?” 9 Georgetown Immigration Law Journal 451 (1995) (with James A. Shapiro)

“Prosecuting Public Officials Under the Hobbs Act: Inducement as an Element of Extortion Under Color of Official Right,” 52 University of Chicago Law Review 1066 (1985)

PRESENTATIONS

Provided analysis and commentary for the media on the Oklahoma City bombing prosecutions and other federal criminal matters, including appearances on the PBS *Newshour with Jim Lehrer*, MSNBC, and CNN.

Moderator of panel discussion at 1999 Mercer Law Review Symposium entitled “A Proposed Code of Ethics for Legal Commentators: A Symposium.” Panelists included Johnnie L. Cochran, Jr., Barry C. Scheck, Erwin Chemerinsky, and Laurie Levenson. [Published in 50 Mercer L. Rev. 671 (1999)]

Moderator of Roundtable Discussion on the Independent Counsel Statute between former Watergate Special Prosecutor Archibald Cox, former Iran/Contra Independent Counsel Lawrence E. Walsh, former Attorney General Griffin B. Bell, and former White House Counsel Lloyd N. Cutler. [Mercer Law Review Symposium, October 27, 1997, published in 49 Mercer L. Rev. 453 (1998)]

Recent Supreme Court Decisions Concerning Criminal Law and Procedure: A Briefing for Federal Prosecutors,” presentation to U.S. Attorney’s Office, Middle District of Georgia (Macon, Georgia, October 2, 2008)

“The Use of Subpoenas to Compel Journalists to Reveal Their Sources,” panelist with First Amendment Attorney Floyd Abrams and University of Chicago Law Professor Geoffrey Stone in the “Issue of Concern to the Legal Profession” series before the American Bar Association House of Delegates (New York, New York, August 11, 2008)

“Constitutional Criminal Procedure,” presentation at program sponsored by the Institute of Continuing Judicial Education of Georgia (Jekyll Island, Georgia, May 12-14, 2008)

“Turning Back the Clock to 1908,” senior dinner speech to the Mercer Law Class of 2008 (Macon, Georgia, April 22, 2008)

“An Enigma Deciphered: Justice Powell’s Concurring Opinion in *Branzburg v. Hayes*,” presentation at Charleston School of Law (Charleston, South Carolina, April 4, 2008)

“The First Amendment, Reporters, and Confidential Sources in the CIA Leak Case,” presentation at Florida Coastal Law School (Jacksonville, Florida, March 18, 2008)

“Supreme Court Update: Criminal Law and Procedure,” CLE program at Mercer Law School (Macon, Georgia, March 7, 2008)

“The Rest of the Story About Special Testimonial Privileges for Reporters,” keynote address at the annual convention of the National Association of Appellate Court Attorneys (New Orleans, Louisiana, August 3, 2008)

“*Miranda* and the Law of Privileges,” symposium presentation at “*Miranda* at 40: Applications in a Post-Enron, Post-9-11 World,” Chapman University School of Law (Orange, California, January 26, 2007)

Presented oral argument in a mock appellate argument against former Assistant U.S. Solicitor General Miguel Estrada before a panel of the Eleventh Circuit at the Eleventh Circuit Appellate Practice Institute (Atlanta, Georgia, October 26, 2006)

“The First Amendment, Reporters, and Grand Juries,” address to meeting of the Middle Georgia Trial Lawyers’ Association (Macon, Georgia, October 4, 2006)

Panelist, Session on Media Subpoenas, Annual Convention of the Society of Professional Journalists (Chicago, Illinois, August 26, 2006)

“The CIA Leak Inquiry: An Examination of the Public Record,” speech to Mercer’s University Club (Macon, Georgia, May 16, 2006)

Panelist, “When Journalists are Compelled to Speak: A Close Look at the Government’s Subpoena Power,” 19th Annual Media and the Law Seminar sponsored by Kansas City Metropolitan Bar Association and the University of Kansas School of Law (Kansas City, Missouri, April 7, 2006)

“Media Subpoenas: The Reporter’s Privilege in Federal Criminal Cases” and “Implications of *Crawford v. Washington*,” Office of the United States Attorney, Middle District of Georgia (Macon, Georgia, March 15, 2006)

“Deliberating the Jury,” address to William Augustus Bootle Inn of Court (Macon, Georgia, September 27, 2005)

“Media Subpoenas: The Reporter’s Privilege in Federal Criminal Cases,” 31st Annual Federal Criminal Law Seminar hosted by the United States Attorney, Southern District of Ohio (Miami, Ohio, July 14, 2005)

“National Security Cases: Reporter’s Privilege in the Face of Grand Jury Investigations,” Department of Justice National Security Coordinators’ Conference at the National Advocacy Center (Columbia, South Carolina, June 27, 2005)

“The Future of the Federal Sentencing Guidelines,” Greater Chicago Chapter of the Association of Certified Fraud Examiners (Chicago, Illinois, September 14, 2004)

“Recent Developments in Federal Sentencing Law,” Regional Meeting of Inspectors of the U.S. Department of Labor (Chicago, Illinois, March 25, 2005)

“Federal Sentencing in Light of *Booker*: Where Do We Go From Here?” Chicago Bar Association (Chicago, Illinois, February 25, 2005)

“Issues in Criminal Appellate Practice,” Office of the United States Attorney, Northern District of Illinois (Chicago, Illinois, April 10, 2003, October 10, 2003, and March 18, 2005)

Instructor, Department of Justice Appellate Chiefs’ and Coordinators’ Conference, National Advocacy Center (Columbia, South Carolina, February 26-28, 2003)

“Jury Selection After *Batson*,” Continuing Legal Education program, sponsored by the Macon Bar Association (Macon, Georgia, November 8, 2002)

“Meet the Class of 1902: Address to the Mercer Law School Class of 2002,” Mercer Law School Senior Dinner (Macon, Georgia, April 25, 2002)

“A Briefing on Post-September 11th Legal Developments in Criminal Law & Procedure,” Speech to League of Women Voters of Macon (Macon, Georgia, February 27, 2002)

“August 11, 1938: A Day in the Life of Senator Walter F. George,” Speech to Dublin Rotary Club (Dublin, Georgia, September 21, 2001) and Middle Georgia Phi Beta Kappa Society (Macon, Georgia, October 18, 2002)

“The Education of Walter F. George,” Address at Woodruff Scholarship Finalist Dinner (Macon, Georgia, February 22, 2002)

Moderator of panel discussion, “Ethical Issues in Criminal Litigation,” William Augustus Bootle Inn of Court (Macon, Georgia, April 19, 2001)

“Anatomy of a Landmark Case: The Supreme Court Reconsiders *Miranda*,” Law Day Presentation (Macon, Georgia, March 11, 2000)

“You are History: Address to the Mercer Law School Class of 2000,” Mercer Law School Senior Dinner (Macon, Georgia, April 25, 2000)

Commentator on Evidence Issues, Mock Trial, William Augustus Bootle Inn of Court (Macon, Georgia, January 11, 2000)

“The Debate Over the Independent Counsel Statute,” Law Day Presentation (Macon, Georgia, March 13, 1999)

Guest Speaker, Macon Association of Criminal Defense Lawyers (Macon, Georgia (January 21, 1999)

“Inside the Oklahoma City Bombing Case,” Law Day Presentation (Macon, Georgia, March 14, 1998)

Instructor, Institute of Continuing Judicial Education, University of Georgia, Program on Constitutional Criminal Procedure for Magistrate Court and Municipal Court Judges (Columbus, Georgia, May 21-23, 1997; Marietta, Georgia, May 21, 2007; Jekyll Island, Georgia, May 12-14, 2008)

“Supreme Court Update: A Briefing on Recent Supreme Court Decisions with Implications for Federal Criminal Prosecutions,” 7th Annual United States Attorneys’ Office Continuing Legal Education Conference (Macon, Georgia, March 7, 1997)

“Glide Path to an ‘Inclusionary Rule’: How Expansion of the Good Faith Exception May Fundamentally Change the Exclusionary Rule,” paper presented to conference on criminal justice hosted by University of Nebraska Law School, Creighton University Law School, and the University of Nebraska-Omaha (Omaha, Nebraska, September 7, 1996)

“The Federalization of Crime,” presentation to The Federalist Society, Mercer University School of Law (October 17, 1995)

“Chain Reaction,” Address to Debate Coaches at the 1995 Barkley Forum, Emory University, published in The Rostrum (December 1999)

LAW SCHOOL & COMMUNITY SERVICE

Representative of the law faculty in the Mercer University House of Delegates (1995- 99); Member of the House of Delegates Executive Committee (1996-99); House of Delegates Chair-elect (1997-98); Chair (1998-99); Member of the University Academic Council(1998-99); Member of the University Planning Council (1998-99)

Appointed by the Dean of the law school to serve as Chair of the law school’s Strategic Planning Committee, which developed a 10 year strategic plan that was approved by the law faculty and the University Trustees (2007-08)

Appointed by the Dean of the law school to serve on the Woodruff 2000 Committee, which developed a five-year plan for the law school

Elected by the law faculty to serve on the law school’s Policy Committee (2000-02; Chair 2002, 2006-2009)

Chair, Law School Curriculum Committee (2001-02); Member, (1996-97, 2005-07)

Member, Law School Appointments Committee (2001-02)

Chair, Law School Career Services Committee (1998-99); Member (1996-99)

Member, Law School SACS Accreditation Committee (1998-2002)

Faculty Advisor, Mercer Law School Moot Court Board (1999-2003); responsible for administration of the moot court program

Faculty Coach for Moot Court teams entered in John J. Gibbons Criminal Procedure Moot Court Competition at Seton Hall Law School (1995-2000, 2002, 2006-09)

Faculty Coach for Moot Court teams entered in Florida Workers' Compensation Moot Court Competition (1997-98, 2000-01)

Faculty Coach for Moot Court teams entered in University of San Diego National Criminal Procedure Moot Court Competition (1999, 2002)

Organizer of 1997 Mercer Law Review symposium entitled "The Independent Counsel Statute: A Symposium"

Founder and Faculty Advisor of the Mercer Association of Prosecutors, a joint student and alumni organization

Faculty Advisor to student prosecutor in two law school Honor Court Investigations

Administrator, Introduction to Counseling course (Fall 1995)

Vice-Chairman, Bibb County Teen Court Advisory Board (1998-99)

Co-coach, Mount de Sales High School Mock Trial Team (1998)

PERSONAL

Born July 19, 1957; Married to Eileen C. Carlson

ATTACHMENT #1: REPRESENTATIVE CASES AS ASSISTANT U.S. ATTORNEY

James P. Fleissner

Assistant United States Attorney, Northern District of Illinois

1986-1994, 2003-2005, Special AUSA 2005-2009

UNITED STATES DISTRICT COURT

United States v. Stillo: Four week racketeering and extortion conspiracy trial of Cook County Circuit Court Judge and an attorney. The judge was accused of fixing criminal cases for money. This case was an outgrowth of Operations "Greylord" and "Gambat."

United States v. Plescia: Eight week trial of five defendants on cocaine trafficking and weapons charges. (Three others pleaded guilty). This was first "dual jury" trial in the district owing to a severance granted by the court. Evidence included Title III intercepts of cellular phone, undercover purchases, and testimony of a former Chicago policeman who had pleaded guilty in the case.

United States v. Mosky: Nine week racketeering and fraud trial of three defendants, who were commodity future traders at the Chicago Mercantile Exchange. This case was a result of Operation "Hedgeclipper," in which undercover FBI agents posed as commodity futures floor traders for about two years. Evidence included undercover tapes, financial records, and testimony from two cooperating defendants.

United States v. Nash: This extortion prosecution of a Chicago Police Captain was a product of a long-term FBI undercover operation named "Chirings", which investigated auto thefts and insurance fraud. The defendant had extorted protection payments from the "chop shop" run by the FBI. The defendant, who was one of the highest ranking policemen ever prosecuted in Chicago, pleaded guilty to extortion charges.

United States v. Marquez: Six week trial of nine defendants charged with running organization engaged in the wholesale distribution of heroin and cocaine. (10 other defendants pleaded guilty). The evidence involved Title III wiretaps and undercover purchases of narcotics.

United States v. Austin: This prosecution charged a husband and wife with engaging a scheme to defraud the government by filing hundreds of false federal tax returns calling for refunds. The husband pleaded guilty and the wife had a two week trial in which she asserted a "battered woman syndrome" defense.

United States v. Cusimano: This case involved charges against the president and outside accountant of International Games, Inc. for tax evasion and false corporate tax returns. Both defendants entered guilty pleas on the eve of trial.

United States v. Tezak: In this arson and obstruction of justice case, a prominent Illinois businessman and political figure was charged along with five other co-conspirators. The defendants were charged with destroying records subpoenaed in an IRS investigation and threatening to kill a witness.

United States v. Sulieman: Two week trial of three defendants for participating in arson of business for the purpose of collecting insurance proceeds.

United States v. Pressley: One week trial of defendant for committing an armed bank robbery.

United States v. Dudek: Two week trial of Chicago Police officer charged with aiding and abetting a cocaine distribution ring.

United States v. Marcus: Two week trial of Chicago Police officer for engaging in an insurance fraud scheme.

UNITED STATES COURT OF APPEALS

New York Times v. Gonzales: Government's successful appeal to the Second Circuit of district court's declaratory judgment barring issuance of grand jury subpoenas for telephone records in a terrorism funding investigation. Presented oral argument February 13, 2006. (Co-author).

United States v. Burke: Appeal by defendant extradited from England and convicted of perjury for lying about his role in facilitating the escape attempt of a federal prisoner resulting in the deaths of two law enforcement officers and the prisoner. (Editor).

United States v. Spano: Appeal of three defendants challenging the constitutionality of federal statute criminalizing fraudulently obtaining monies of a governmental entity receiving federal funds. (Editor).

In re: Grand Jury Proceedings: Appeal by immunized witness held in civil contempt for refusing to provide grand jury testimony in an investigation into the Palestinian terrorist organization Hamas. (Editor).

United States v. Dumeisi: Appeal by defendant convicted of being an unregistered agent of the government of Iraq, including claims regarding the Classified Information Procedures Act and the admission of evidence seized from Iraqi files in Baghdad after the invasion of Iraq. (Editor).

United States v. Hanhardt: Appeal by former Chicago Police detective and three others convicted in a nationwide scheme to steal in excess of \$40 million from more than 100 jewelry salespersons. (Editor).

United States v. Lorenz-Maltese: Appeal by former officials of Cicero, Illinois, including the mayor, after being convicted to fraudulently obtaining millions of dollars from the city's health care insurance system. (Editor).

United States v. Veysey: Appeal by defendant convicted in arson/murder scheme. (Editor).

United States v. Patterson: Appeal by two Chicago police officers convicted in a scheme to steal cocaine and drug proceeds from drug dealers. (Editor).

United States v. Johnson: Appeal by defendant convicted of attempted manufacture of child pornography raising several constitutional challenges to the statute criminalizing his conduct. (Editor).

United States v. Raney: Appeal by defendant convicted of interstate travel for the purpose of sexually exploiting a minor. (Editor).

United States v. Paladino: Appeal by five defendants convicted of an elaborate scheme to defraud investors and other commercial partners and to launder the proceeds. (Editor).

United States v. Kyser: Appeal by three defendants convicted of various drug offenses for distributing cocaine, cocaine base, heroin, and marijuana. (Editor).

United States v. Re: Appeal by two defendants convicted of extortion plot including the carrying out of a severe beating of the extortion victim. (Editor).

United States v. Mancari: Appeal by two defendants for obstruction of justice for hindering a federal investigation into labor union members engaging in a string of arsons. (Editor).

United States v. Torres: Appeal four defendants engaged in an extensive crack cocaine distribution ring as part of the activities of a street gang. (Editor).

United States v. Frith: Appeal by defendant convicted of securities law offenses arising out his operation of a company providing a market for sellers and buyers of limited partnership interests. (Editor).

United States v. Garner: Appeal by eight City of Chicago House Inspector's convicted of racketeering and extortion charges following six week trial. (Author).

United States v. York: Appeal by defendant following conviction for arson and fraud scheme in which he killed his business partner and destroyed the business to collect insurance proceeds on both. (Author).

In re: Special January 1989 Grand Jury (Appeal of John Doe Trader Number One): Appeal by grand jury target of contempt finding for failure to comply with subpoena during investigation of fraud at Chicago's commodity exchanges. "John Doe" challenged the legality of electronic surveillance used in the investigation. (Co-author).

United States v. Bailin: Appeal following declaration of mistrial in case involving racketeering and fraud charges against ten defendants who were commodity future traders. Issues were double jeopardy and scope of collateral estoppel at retrial. Following remand, negotiated plea agreements with all defendants. (Co-author).

United States v. Alex: Appeal by three defendants convicted on racketeering and extortion charges stemming from shakedown operation of "street crew" affiliated with Chicago organized crime syndicate, under the control of Gus Alex. (Editor).

United States v. Cheek: Appeal by "tax protestor" convicted of tax charges following retrial after reversal of first conviction by the Supreme Court. (Editor).

United States v. Moore: Appeal by four defendants challenging convictions for engaging in multi-million dollar bank fraud scheme and conspiring to assist escape of co-schemer from federal prison. (Editor).

United States v. Nwafor: Appeal by three defendants convicted of extensive heroin smuggling and money laundering. (Editor).

United States v. Durman: Appeal by six defendants convicted on charges of participating in a cocaine distribution organization. (Editor).

United States v. Mitan: Appeal by attorney convicted of tax evasion and bankruptcy fraud. (Editor).

ATTACHMENT #2: UNITED STATES v. HENRY G. CISNEROS

James P. Fleissner
Senior Associate Independent Counsel
April 1998-October 2000

- Appointed by Independent Counsel David M. Barrett in April 1998. Indictment had been returned in December 1997. Case was pending in the United States District Court for the District of Columbia before Judge Stanley Sporkin. Duty station was Macon, Georgia. Traveled to Washington, D.C. as necessary for work and court appearances for a total of over 20 trips.

- Principal author of response on behalf of the United States to the following motions:
 - Defendant's motion to dismiss for lack of prosecutorial authority, which raised two constitutional challenges to the Independent Counsel Statute.
 - Defendant's motion to dismiss on the ground that the prosecution of certain counts would violate separation of powers and the political question doctrine.
 - Defendant's motion to dismiss based on alleged failure to comply with Department of Justice guidelines as required by the Independent Counsel Statute.
 - Defendant's motion to suppress tape recordings based on lack of authenticity and alleged violation of the federal wiretapping statute.
 - Defendant's motion to dismiss the obstruction of justice count

- Following the denial of pre-trial motions and before the hearing on the motion to suppress, the defense filed a notice of appeal from the denial of the motion to dismiss alleging a violation of separation of powers and the political question doctrine. Assigned as principal author of brief for the United States in the interlocutory appeal before the United States Court of Appeals for the District of Columbia Circuit. The appeal was denied. Assigned as principal author of appellant's motion to stay issuance of the mandate. That motion was denied.

- Upon return of the case to the District Court, assigned as one of three attorneys to handle hearing on the motion to suppress tape recordings. Principal author of pre-hearing brief for the United States. Responsibilities included presentation of expert witness and making the closing argument after the month-long hearing. Principal author of post-hearing brief for the United States. The District Court admitted almost all of the disputed evidence.

- After the suppression hearing, responsibilities included planning trial strategy, witness preparation, a drafting a juror questionnaire and jury instructions. When plea negotiations ensued, participated in decision making process and drafted correspondence and court documents. A guilty plea to lesser offense was entered in September 1999.

- Reported decisions: 66 F. Supp. 2d (Sept. 7, 1999); 169 F.3d 763 (D.C. Cir. 1999); 59 F. Supp. 2d 58 (July 26, 1999); 26 F. Supp. 2d 24 (July 30, 1998); 26 F. Supp. 2d 13 (June 19, 1998)

ATTACHMENT #3: SPECIAL COUNSEL INVESTIGATION

James P. Fleissner
Deputy Special Counsel
January 2004-January 2009

- Appointed by Special Counsel Patrick J. Fitzgerald, who was delegated authority to investigate whether one or more government officials improperly leaked the identity of a CIA agent.
- Served as lead counsel in litigation over subpoenas issued to reporters and media entities. In June 2004, briefed motions to quash filed by Tim Russert of NBC and Matthew Cooper of Time Magazine. Movants argued that they had a First Amendment and common law privilege not to testify, that Department of Justice regulations vested them with rights, and that the government's ex parte factual showing to the court violated due process. On July 8, 2004, presented oral arguments at hearings before Chief Judge Thomas F. Hogan of the United States District Court for the District of Columbia. The court denied the motion, holding that there was no privilege, and that even if there was a privilege, it has been overcome on the facts of the case. The court further rejected the due process claim. In re: Special Counsel Investigation, 332 F.Supp.2d 26 (D.D.C., July 20, 2004). Tim Russert and Matthew Cooper subsequently provided testimony.
- Subpoenas were issued to Walter Pincus and Glen Kessler of the Washington Post. Both provided testimony.
- Subpoenas were issued to Judith Miller for documents and testimony and to Time Magazine and Matthew Cooper for documents and testimony not covered by the first subpoena to Cooper. Both moved to quash. Filed briefs on behalf of the government and presented argument in the district court. The motions were denied. In re: Special Counsel Investigation, 338 F.Supp.2d 16 (D.D.C. Sept. 9, 2004). Miller, Cooper, and Time refused to comply and were held in civil contempt. Miller and Cooper were ordered confined, and Time was subject to a fine. Contempt sanctions were stayed pending appeal.
- Filed brief on behalf of the government in the United States Court of Appeals for the D.C. Circuit. Presented oral argument on December 8, 2004. The D.C. Circuit affirmed the contempt sanctions against all three appellants. In re: Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (D.C. Cir. 2005). Filed government's brief in opposition to rehearing en banc. Rehearing was denied. In re: Grand Jury Subpoena, Judith Miller, 405 F.3d 17 (D.C. Cir 2005). Appellants petitioned the Supreme Court for writ of certiorari. Filed government's opposition to certiorari in the Supreme Court. Certiorari was denied on June 27, 2005. Miller v. United States, 125 S.Ct. 2977 (2005). On remand, submitted briefing regarding reconsideration of contempt sanctions. The court held that the contempt sanctions would be imposed as previously ordered. In re: Special Counsel Investigation, 374 F.Supp.2d 238 (D.D.C. 2005). On July 12, 2005, Cooper agreed to testify and Time agreed to provide documents. Miller was confined for 85 days before agreeing to provide documents and testimony.

●Participated in grand jury investigation leading to indictment in United States v. Libby on October 28, 2005. Participated in pre-trial proceedings related to discovery and related matters. Principal author of government's response to defendant's motion to dismiss on the ground that the delegation of authority to the Special Counsel's was not in conformity with the Appointments Clause of the Constitution. The district court denied the motion. United States v. Libby, 429 F.Supp. 2d 27 (D.D.C. 2006). See brief at 2006 WL 938513. Participated in drafting government motions in limine and responding to various defense motions, including proceedings under the Classified Information Procedures Act. See, e.g., United States v. Libby, 453 F.Supp.2d 81 (D.D.C. 2006); United States v. Libby, 461 F. Supp.2d 3 (D.D.C. 2006); United States v. Libby, 467 F. Supp.2d 1 (D.D.C. 2006); 467 F.Supp.2d 20 (D.D.C. 2006).

●Following the defendant's conviction at trial, participated in drafting government's sentencing memorandum and submission regarding application of the sentencing guidelines. After imposition of a 30 month sentence, co-authored district court brief successfully arguing against bail pending appeal and court of appeals brief successfully defending the district court's decision. United States v. Libby, 498 F.Supp.2d 1 (D.D.C. 2007). Following the commutation of the defendant's prison sentence by the President, continued to serve as counsel representing the government in defendant's appeal of the conviction. The appeal was voluntarily dismissed on December 11, 2007. After dismissal of the appeal, assisted with responses to requests for information and testimony from Congressional committees. Appointment as Special Assistant U.S. Attorney expired on February 4, 2009.