

**ORAL HISTORY OF BENJAMIN R. CIVILETTI
SECOND INTERVIEW
SEPTEMBER 27, 2001**

This interview is being conducted on behalf of the Oral History Project for the District of Columbia Circuit. It is the second interview of Benjamin R. Civiletti, former Attorney General of the United States. The interviewer is Patricia Shakow. The interview took place at the Venable law firm at 1201 New York Avenue, in the District of Columbia, on Thursday, September 27, 2001, at 10:00 a.m.

Ms. Shakow: Ben, our last interview ended rather abruptly. We were at the point where you were in law school at Baltimore. We talked about your friends there, the courses you liked and didn't like. Is there anything more you'd like to say about your law school years in Baltimore before we go on to the dread bar exam and other things?

Mr. Civiletti: No.

Ms. Shakow: You took the bar in Baltimore?

Mr. Civiletti: Yes.

Ms. Shakow: Do you remember it as the worst six weeks of your life as I do?

Mr. Civiletti: No. I had taken a bar review course, one of the bar review courses, and had worked fairly diligently at passing the bar. And I didn't really have grave concerns about it.

Ms. Shakow: Good.

Mr. Civiletti: It was given in the Old War Memorial building right on the downtown square which had no air conditioning, so I remember it was hot as the dickens.

Ms. Shakow: I remember that, too. Really hot.

Mr. Civiletti: It was right across from City Hall. It was uneventful really.

Ms. Shakow: Good. You began your career clerking for Judge W. Calvin

Chestnut. How did that job opportunity come about and what was the judge like as an individual and as a jurist?

Mr. Civiletti: The dean recommended me to Judge Chestnut and I interviewed with him. At that time he was about 84 or so. He was a Republican appointee appointed to the bench, probably by Hoover. He was a tiny man who was very precise and who was known as a fair judge but one who was quite demanding regarding decorum and formal conduct in the courtroom. He was at that time having difficulty seeing and hearing, so he had his law clerk aid him with both: be in the courtroom during the course of trials and read all of the citations and references that were made in briefs and memorandums or motions in the proceedings. So, it was quite a good experience and education clerking for him, unlike being stuck in a library for some judges. By comparison, a terrific clerkship because of these infirmities of Judge Chestnut, but he was a great judge. Very bright. He had the distinction of being appointed by Chief Justice Hughes to be the trial judge in the *Manton* prosecution when Second Circuit Judge Manton was accused of having been corrupted in a case and was convicted, and Judge Chestnut tried that case in New York. And he said it was a terrible experience because it was a criminal trial of a judge, but also because when he was in the robing chamber and went on the bench, he had left his gold watch in the robing chamber and when he came off the bench it was gone. (Laughter) So he was not very fond of New York.

Ms. Shakow: At least our old image of New York. How old was he when he took on that challenge? Was he in his eighties?

Mr. Civiletti: No. I think Manton was prosecuted — I want to say the '40s — so he may have been maybe sixties, something like that.

Ms. Shakow: Vigorous like us, right?

Mr. Civiletti: Right.

Ms. Shakow: Was he an easy person to get along with? Did you know his family? Did you have that kind of personal relationship?

Mr. Civiletti: No. No, I did not know his family well. I knew them roughly. He had two daughters. He had a son-in-law who also became a judge, and was on the Court of Appeals of Maryland, the high court of Maryland, Wilson K. Barnes, who had been a pretty good trial lawyer. And I knew him. And the judge lived in Roland Park. In fact, later on I bought a home that was about a block away from where he had lived on the corner. But he was a very private man and rather — I won't say cold, but cool.

Ms. Shakow: Were you the only clerk, or were there two of you practicing?

Mr. Civiletti: No. I was the only clerk, but there was a second person who was the crier who would call the court to order — “Oyez, oyez, oyez, all people having business before — ”

Ms. Shakow: Like the marshal, but not someone who could help him in the legal aspects.

Mr. Civiletti: Well, he did though. That person did help a bit.

Ms. Shakow: I assume he was a senior judge by the age of eighty-seven, and elected to keep working.

Mr. Civiletti: I think he was, but his choice of senior status came quite late, because I don't think at that time they had the rule that they now have that it's 70. And so I think he took senior status either the year before I was there or the year I was there, because a new

judge was sworn in, whose name was Edward S. Northrop, who later became Chief Judge, and I'll never forget it, because I was in the courtroom when he was sworn in. And his introducer at the very end said after he had given this long recitation of State Senator Northrop's qualifications, said, "And so I present to Your Honors the Honorable Edward S. Nervous." (Laughter) It was one of the great slips.

Ms. Shakow: A family story of ours when we were told not to comment on the size of the person's nose who was coming to dinner and of course, someone said, "Mr. Nose, it's nice to see you." With children it is to be expected. (Laughter) It must have been very difficult for a man with those infirmities to run a trial. One thing to be an appellate judge, but I should think it would have been very hard.

Mr. Civiletti: Well he took mainly jury cases in which he didn't have to make many decisions nor the ultimate decision. He only had to make decisions on evidence and he was very well schooled in evidence and he only had to make decisions on motions for directed verdict, etc.

Ms. Shakow: But he could hear well enough to hear the witnesses, for instance?

Mr. Civiletti: Mostly.

Ms. Shakow: Well, at least the jury was listening.

Mr. Civiletti: That's right. The jury was there. And it was not an accident that he had mostly jury cases.

Ms. Shakow: Do you remember any particular cases from that period that were interesting or important to you personally?

Mr. Civiletti: No. I remember cases and incidents that happened that I was able

to use later on in talks or whatever, that were hilarious.

Ms. Shakow: Tell us about some of those.

Mr. Civiletti: This is '61, '62. There were a lot of revenue cases where Maryland and the Eastern Shore of Maryland and southern Maryland, Anne Arundel County were hot beds for making illegal whiskey — moonshine — and so without fail the revenue officer would testify that he was able to follow and stop the car because it was weighted down and it was obvious from where it was traveling and the route the person had taken that he had probable cause to believe that they was carrying illegal moonshine. So, that was a familiar pattern of testimony. The ATF — Alcohol, Tobacco and Firearms — agents and then on this one occasion the agent was on the stand and he said, “Yes, and I was following this vehicle on the Ritchie Road to Annapolis which was heavily loaded.” And the judge said, “Wait a minute. Wait a minute. What were you doing on the Dixie Road to Dallas?” (Laughter)

Ms. Shakow: You see? I asked about his hearing.

Mr. Civiletti: (Laughter) And then on another occasion he had a case in which there was a French witness, Mr. Beauchamp. And so he got on the stand and the clerk said, “Would you please state your name?” And the man said, “My name is Monsieur Beauchamp.” Well the judge leaned forward and he said, “Could you spell that please?” And so the man said, “B-e-a-u-c-h-a-m-p.” The judge said, “That's right.” We had motions day on Fridays, so he'd come on the bench and there would be 20 or 30 lawyers in the courtroom for all kinds of arraignments and motions in criminal and civil cases. So, there was this one criminal defense lawyer. I think his name was Kaplan. He smoked cigars, and so he had a cigar in the courtroom and the bailiff came in and was about to call the court in, so he put the cigar on the clerk's desk

front. And so the judge came in on the bench and he sat down and he said, “Who's cigar is that?” — I don't know whether he could see it; or been able to smell it — and he said, “Who's cigar is that?” And so Mr. Kaplan said, “It must be yours, Your Honor, you saw it first.”

(Laughter)

Ms. Shakow: I can tell people had as much fun with him as anyone. (Laughter)

Mr. Civiletti: That's right.

Ms. Shakow: Well, we all remember those wonderful stories when we were young and in a courtroom filled with the kind of people we hadn't seen before. I think that was certainly true of me. What was the most important thing you learned during your clerkship?

Mr. Civiletti: Advocacy, I think. The difference between good advocacy, style, the variety of ways to convince, dealing with witnesses effectively.

Ms. Shakow: Did it give you confidence that you could do this as well or perhaps better than most of the people doing it at the time?

Mr. Civiletti: Well I thought so at the time. (Laughter) I thought so at the time. Until I had to do it myself, then it wasn't as easy as I thought it was.

Ms. Shakow: I remember my first visit to the Supreme Court when I was in law school thinking to myself, now I'm fairly confident I can do this because there was some really terrible advocates there.

Were you politically active during that period at all? Kennedy, of course, had just been elected. Were you affected by his election?

Mr. Civiletti: I was a Kennedy supporter in a modest way. I was a supporter, an advocate, and might have gone to some political rallies for President Kennedy. I had met Joe

Tydings, who was the campaign manager in two or three states for Kennedy. But having come from New York, I was not a born and bred Marylander and had no political connections in Maryland.

Ms. Shakow: I led into that in order to ask you how you came to move to the U.S. Attorney's Office. When you completed your clerkship — always that it is a very difficult job to get. I know federal clerks have a leg up on other people.

Mr. Civiletti: I was very fortunate in that at that time; unlike today, you did not have to have two or three years of practice experience, or more, before getting considered for the U.S. Attorney's Office. I applied to the City Solicitor's Office, the State's Attorney's Office, and the U.S. Attorney's Office and I got offers from all three.

Ms. Shakow: You never thought of private practice at that point in your life?

Mr. Civiletti: No. Because I wanted to be a trial lawyer and I thought that the best and fastest way to get into court most often was in a public trial office. And I was fortunate in that the office for Maryland was expanding and it got two more vacancies in addition to its complement of eight, it went to ten.

Ms. Shakow: Attorneys?

Mr. Civiletti: Yes. Assistants. Ten assistants. And so there was a spot and I was recommended by the Chief Judge and by Judge Chestnut. And I had an acquaintance who was in the office too. And the various Assistant U.S. Attorneys had seen and talked to me so they knew me. I was not a stranger. And so I was fortunate to get the offer.

Ms. Shakow: So it wasn't Joe Tydings who had anything to do with your getting the offer?

Mr. Civiletti: Well, he's the one who selected, I guess, the nominee, but he didn't know me from Adam.

Ms. Shakow: Did you have any opinion of him as an effective —

Mr. Civiletti: Tydings?

Ms. Shakow: Yeah.

Mr. Civiletti: I liked him. He was straight. He was, I thought, very hard working, courageous because very shortly the savings and loan scandals broke and we investigated, Steve Sachs and I. Steve later became Attorney General of Maryland for a couple of terms, investigated the Speaker of the House of Maryland and a couple of the senators in Maryland, a trio of prominent lawyers, and prosecuted all of them. And Tydings prosecuted a congressman from the Eastern Shore for obstruction of justice, and so he was a very courageous prosecutor.

Ms. Shakow: Yes. I'm glad to hear you mention Steve, because he and I were at law school together. I was a year behind him and he is a great favorite of mine. And I was going to ask you whether there were others in your office at that time who later went on to public careers. People you might know about or who became judges?

Mr. Civiletti: Joe Kaplan, who was there at the time and stayed, had been appointed by Joe Tydings too. He had come from Venable to that office and then in due course he returned to Venable and right after I went to Justice, he went on the circuit court for Baltimore City and became the Chief Judge there and has served with great distinction. The second person is Dan Moylan, who was the younger brother of Judge Moylan from the Court of Special Appeals. He became a state trial court judge in Hagerstown, and served with distinction

until his recent retirement.

Ms. Shakow: That's an impressive group, eight people.

Mr. Civiletti: Yes. Four out of eight earned their keep. Two died relatively young.

Ms. Shakow: Well, we won't even count them. Then your percentage goes higher. What political figures and well-known members of the bar did you get to know during that period, if any? You certainly knew those who became defendants.

Mr. Civiletti: Yeah, I knew the defendants. We were in the — Senator Sarbanes I came to know then because he clerked for Judge Soper on the Fourth Circuit who had his offices in the same post office building in Baltimore, and Soper and Chestnut had been state's attorneys together early in their careers. So they saw each other frequently, and I got to know Senator Sarbanes then as a fellow law clerk, although he was in an elevated status being clerk for an appellate judge.

Ms. Shakow: So, two of the people you met in that time became United States senators.

Mr. Civiletti: Yes.

Ms. Shakow: And fairly early in their careers, too.

Mr. Civiletti: Yes. And of course Sarbanes later on came to Venable.

Ms. Shakow: I didn't know that.

Mr. Civiletti: Yes. After he finished his clerkship, he went to Walter Heller as an aide to Heller in the Kennedy years. After serving a couple years in that, he was hired by one of my senior partners, Francis Murnaghan, who later became a fourth circuit judge, who was at

Venable. He was president of the Baltimore City Charter Commission to rewrite the Constitution of the City. He hired Sarbanes as the editor for the charter. In any event, Paul did that and then when he finished that he came to Venable about a year after I came to Venable. I came to Venable in about October or November of '64 and he came about the same time in '65, and so we were associates together.

Ms. Shakow: Did he run for the Senate from that office? Was he still at Venable when he ran?

Mr. Civiletti: No. He stayed at Venable from about '65 through '70. Five years. He ran for the House of Delegates in Maryland in '66. I was his campaign manager and treasurer. He won that election and then he ran against Fallon in '70 for the House of Representatives. And when he won that race, he left Venable because he felt there might be a conflict and that it was a full-time job being a congressman. And then he was redistricted because he had gone against the party, challenging a fellow Democrat, Fallon, the sitting chairman of the Public Works Committee, so they considered him to be a —

Ms. Shakow: A spoiler.

Mr. Civiletti: A spoiler or a rebel, and so redistricted him and put him in Rep. Garmatz' district, who was the chairman of Oceans and Fisheries. Fortunately there was an investigation of Garmatz and he withdrew his active campaign and Paul beat him in '72 and — and I was treasurer of those campaigns. And then he ran for the Senate in '76.

Ms. Shakow: I'm trying to remember whom he beat. Was it Butler?

Mr. Civiletti: Beall.

Ms. Shakow: Beall.

Mr. Civiletti: Butler was also in Venable much earlier.

Ms. Shakow: Was he? You really have a lock on —

Mr. Civiletti: Butler. And the rumor is that he came around to see people and asked if it was a good idea that he run for the Senate and they said it was a wonderful thing — .

Ms. Shakow: (Laughter) I bet I know why. Well, in those days, at least, many attorneys kept their positions in their firms when they were elected to higher office.

Mr. Civiletti: Right, they did. Paul decided not to do that.

Ms. Shakow: I think that is very wise, because it is very entangled.

Mr. Civiletti: I don't think he liked practice much either. So it was not only his good sense in judgment, but I think part of it was relief from the practice of law.

Ms. Shakow: Senator Javits, for whom I worked, kept an affiliation with his law firm. It got complicated. He tried very hard to keep them separate. He only did New York real estate law but, you know, the federal government is into everything and it was very difficult.

Mr. Civiletti: Anyway, the assistant's position was terrific at that time because you did both civil law and criminal law. Today they separate them and you only get a taste of one. I made it a point to try as many cases as I could in the years that I was in the office, so I did civil cases and I did condemnation cases. Ramsey Clark was the head of the Lands Division in the Department of Justice in '63 and '64 and we had a backlog of tracts of land that had been taken for Nike sites all over the country.

Ms. Shakow: And we're not talking sneakers.

Mr. Civiletti: Right. No, we are talking about missiles. And so people had withdrawn the initial deposit, but the ultimate fair market value of the land hadn't been

determined. So I came to the Department of Justice and got trained as to how to try condemnation cases and I tried a half a dozen or so as the only assistant in the office to do that. Then later on in private practice I got the property owner's side of trying condemnation cases, which was a lot of fun. But during the same time, I had two other kinds of cases. One, this very, very involved and long-running investigation of savings and loan scandals. D. Spencer Grow, who was a big financier from Utah, and C. Oran Mensik, who was an alleged bad guy from Chicago, had set up these phony savings and loans with old charters that had been defunct from the 1840s, and so they'd open a Bohemian Savings and Loan established in 1840. Then what we really got them on was they set up a phony insurance company which was modeled on the Federal Deposit Insurance Corporation, and they had the same shield and everything and a suggestion that all deposits were insured for \$100,000 and that the insured institutions had been reviewed and audited, and therefore were qualified to receive this insurance. We found a record of a temporary secretary who was used on one Sunday by the insurance company. So we tracked her down to Chestertown. We went and interviewed her and she was a nice woman, very pleasant. And she said, "I remember that because it was very peculiar." She said there was a whole series of papers and savings and loans and applications for insurance and audits and I had to backdate all of them. And so we'd say, well were they all done the same day? That Sunday? She said, "Yeah." She said, "I typed furiously. I had to do it all in one day."

Ms. Shakow: You really found the right person.

Mr. Civiletti: Oh, boy. That was the killer. In addition to that major case, which involved two trials and successful prosecutions of all the people involved, I did stolen car cases, bank robbery cases, interstate transportation of forged security cases. One case I remember

particularly prosecuting was a great big man, maybe 300 pounds or so, who had a check kiting team of maybe 50 people, and he never touched a check. And he never passed a bad check, and he never used any false identification himself. It was always the second- and third-tier people. But we got a snitch in there and then we found his fingerprints all over the machines, and the locker that he kept with various false identifications in it, and we tried him and convicted him. The sad part of that story is he was murdered in jail. He got ten years and he was murdered about two years later.

Ms. Shakow: I would think it would be hard to murder a 300 pound man, but I guess they ganged up on him.

Mr. Civiletti: I guess if you can get to his carotid arteries, it's pretty easy.

Ms. Shakow: Oh, dear. So he was one of your memorable defendants.

Mr. Civiletti: Right.

Ms. Shakow: It sounds as if the savings and loan cases were very long-term. I mean, it must have taken at least a year to prepare —

Mr. Civiletti: It took the full time I was in the U.S. Attorney's Office to investigate the cases, indict them, have the trial. We had the first trial in Richmond on a change of venue. A federal judge from here went to Richmond and Steve and I went down there and lived in the — can't remember the hotel now — but anyway, then we came back and tried A. Gordon Boone here in Maryland. He thought that he could do better in Maryland, since he was Speaker of the House. That took a long time, and then, of course, Joe Tydings left the office to run for the Senate.

Ms. Shakow: Who became the U.S. Attorney after Joe Tydings?

Mr. Civiletti: I think Kenney became the U.S. Attorney. A man named Tom Kenney, who later became a judge. And for a little interim time there, the deputy was the acting U.S. Attorney. But when Joe left, Hardin Marion left, who had been the first assistant to go with his campaign, and then Steve left to go with the campaign. And they had a plan that Hardin would go to Washington if Joe was elected. Steve would go to Tydings and Rosenberg, the law firm, and there was a man named Francis Gallagher that had a firm called Gallagher, Evelins and Finnerty, and we used to call him Francis the Good, a wonderful lawyer. And he was merging with Tydings and Rosenberg, so it was going to be Tydings, Rosenberg and Gallagher. And that occurred. And then when Hardin had served enough time in Washington, he was going to return to the law firm and Steve would go to Washington. And I stayed in the office to do the appeals.

Ms. Shakow: To do all the work that they had left.

Mr. Civiletti: Do all the work. Yes. Take care of the mess. And I was supposed to follow them, in two years, or a year later. And when Steve went to Washington, I was to go either to the law firm or to Washington as the legislative assistant. Well, that didn't work out. I decided that I'd rather go on my own and do my own thing. The last six months that I was in the office, between the appeals and the trials that I was continuing to have, were very busy and very rewarding, and I was very fortunate. I had a secretary named Helen who was an English major, and so I would be doing these appeals late at night and dictating poorly into the machine and she would miraculously turn it into great prose.

Ms. Shakow: You were fortune.

Mr. Civiletti: I was very lucky.

Ms. Shakow: Were you working terrible hours? You say that you were often

there at night because a later question I had —

Mr. Civiletti: I sometimes worked 48 hours straight.

Ms. Shakow: Oh, my.

Mr. Civiletti: And always 10, 12, 14 hours.

Ms. Shakow: And how did your family fare during this time? Was your wife —

Mr. Civiletti: They grinned and bore it.

Ms. Shakow: You're very fortunate. That was good. Because she understood you were building your career and had to put in that time. But it's not easy to be alone with three little children like that and your husband is working all the time. Was it the conclusion of these cases that led you to leave the office and move into private practice?

Mr. Civiletti: It was that, plus — I thought at the time I had learned about as much as I could learn in the office because now it was going on three plus years that I had been in the courtroom regularly and so I felt it was time to get into private practice.

Ms. Shakow: And were you fairly certain you were going to Venable, or did you look around?

Mr. Civiletti: I looked around and I had a lot of different offers. And Venable at that time was 16 lawyers and was viewed as a business and stuffy firm. And Judge Chestnut's secretary, for example, recommended another firm that was a litigating firm and I got an offer from that firm. But Venable had nobody who was dedicated to trial work —

Ms. Shakow: So, they really needed —

Mr. Civiletti: They had some trial lawyers, but I said I wanted to do trial work. And they said, "Okay, then you'll be the first specialist in trial," and there would be nobody

ahead of me. Whereas, at the other firms I would be fifth person, sixth person on the roster. So, I decided Venable was the better choice.

Ms. Shakow: And, there was no resentment on the part of the older lawyers who had done trials as part of their larger responsibility?

Mr. Civiletti: No, because they were glad to give me cases, transfer them and have me do them, and they wouldn't have to worry about them. Or, to say that I could join them as a No. 2 person on the trial team, and I could do the heavy work and they could get the satisfaction of a helper and the success.

Ms. Shakow: Their name was first on the brief. Of course, you did all civil, I assume, civil litigation in the firm.

Mr. Civiletti: No, I did criminal, too.

Ms. Shakow: Were those paying clients or pro bono?

Mr. Civiletti: There were both paying and pro bono. I defended a doctor on charges of distribution of substances without proper prescriptions and identifications, and defended some union members accused of improper conduct. In the '68 riots I defended lots of people for alleged curfew violations and crimes, pro bono.

Then I had the unusual experience of first one engineer and two engineering firms and three came to see me in sequence and saying that there was a series of investigations done by the Internal Revenue Service and U.S. Attorney's Office by a fellow named Pete Twardowicz and George Beall was the U.S. Attorney at the time and there was a prosecution of — I can't remember who the first one was — I think it was County Executive Joe Alton in Anne Arundel County. And eventually Marvin Mandel was prosecuted by the same method, and it was mail

fraud prosecution. It was a prosecution of the County Executive of Baltimore County — I'm trying to think of his name. In any event, it may come to me in a minute. That grand jury investigation was ongoing. And, so these three people came to me, and I represented them. I suggested that they tell the whole truth and they might avoid prosecution.

Ms. Shakow: They were contractors, I assume.

Mr. Civiletti: They were engineering firms, for whom competitive bidding wasn't necessary under the law at the time. It was the selection of the County Executive as to which engineering firm, whether it was structural engineering or sanitary engineering, would be the engineers for a particular public project, the contractor for whom had to competitively bid.

Ms. Shakow: I see. And was the prosecution's concern that these engineering firms had paid off to get the contracts?

Mr. Civiletti: Exactly. And the government had developed a device, a methodology that had first been utilized in New Jersey in order to see if there were irregularities by financial valuations, comparatively, of the expenses of the engineering firms and looking at all noncompetitive awards and to see the itemization of expenses and were there soft spots. Dale Anderson was his name in Baltimore County, the County Executive. So, I said, "You've got to lay out the truth." And, they said, "Well, we can't tell the truth." And one guy said, or the second guy said, "We can't tell." And I said, "What do you mean, just tell the truth that you paid —" Well, they said, "We did pay Anderson and we'd give him \$2,000 in envelopes and various other amounts, really nickel-dime stuff." And I said, "Why can't you?" "Because he wasn't the first." And so I said, "You mean this has been going on for three or four years, five years?" "Yes." "And, so then you paid the predecessor?" "Yes." "Where did you pay him?" "Well, we

paid him in the state house and we even paid him in the White House.” And, so I said, “Well you’ve got to tell the truth.” And, so I went in and saw — so, two of them said they would tell the truth. The third said he couldn’t. So, when I learned that, I had to refer them all to other lawyers, all three of them.

Ms. Shakow: Excuse me, but the predecessor was not suspected at this point.

Mr. Civiletti: Not that I knew of, anyway. And, before I learned of the potential conflict, I went in to the U.S. Attorney’s Office and said hypothetically, “My clients, A, B and C, believe that improper payments were made not only to D but to F, the predecessor.” So, then the eyes lit up, and that eventually led to Agnew’s guilty plea.

Ms. Shakow: Those envelopes and cash.

Mr. Civiletti: In any event, I use that as a reference to the fact that I was doing, maybe thirty percent of my practice, was white-collar crime defense related. I’ve never done street crime of any significance. And I came to Venable as the eighteenth lawyer in the firm, and I stayed for thirteen years and became a partner in — I went to Venable in ‘64, became a partner in ‘69, became the head of its litigation area or group in ‘70 and stayed through ‘77. So, I stayed those thirteen years from October of ‘64 to February ‘77, and got to where I was — one year, I can’t remember the year, maybe ‘76, maybe ‘75 — I was in court 110 days in that year.

Ms. Shakow: So, your schedule was perhaps even worse than it was when you were in the U.S. Attorney’s Office.

Mr. Civiletti: Not worse.

Ms. Shakow: But, certainly not better.

Mr. Civiletti: Because I’d take breaks in between a trial. Then, one year when it

was finished, we took six weeks off and went to Haiti — my whole family — to get away from phones and other distractions.

Ms. Shakow: Who were your mentors? First at Venable.

Mr. Civiletti: Well, H. Vernon Eney was the head of the firm and the person with whom I worked most closely. He and Bill Marbury were the two leading lawyers in Maryland, one at Piper Marbury, and one at Venable. Mr. Eney became, for example, the president of the Constitutional Convention Commission and then was elected president of the Constitutional Convention in Maryland. He was recognized as one of the two leading lawyers in Maryland, a very precise man, very hard taskmaster, but he and I got along very well.

Ms. Shakow: He was considerably older than you when you went to the firm.

Mr. Civiletti: I went to the firm when I was 29, and he was probably at that time 50-55, maybe.

Ms. Shakow: I know it's a very old firm.

Mr. Civiletti: It was established by Major Venable about the turn of the century.

Ms. Shakow: I see, but you didn't have any of these people who had been around since the turn of the century.

Mr. Civiletti: The only one we had was Harry Baetjer, who was the brother of the first Baetjer in the firm. And he was still there when I joined the firm. A little man sat in the chair —

Ms. Shakow: Sort of like your judge —

Mr. Civiletti: Yes. And so all the new lawyers had to see him. So he said, after we had some small talk, "I have a question for you, Mr. Civiletti." And I said, "Yes, sir." And

he said, “What’s the greatest service that you can render to a client in litigation?” And I thought for a minute and I said, “Well, I said you can win the case, you can get a case dismissed, you can recover a large judgment that’s been entered.” He said, “They’re all very good answers, but the best service that you can render to a client in litigation is a timely postponement.” (Laughter)

Ms. Shakow: That’s nice. But, Mr. Eney —

Mr. Civiletti: He was a real mentor.

Ms. Shakow: He really ran the firm.

Mr. Civiletti: He ran the firm and he had an engineering bent, so he took care of lights, furnace and the water and the —

Ms. Shakow: But not the engineering clients who came into you —

Mr. Civiletti: No.

Ms. Shakow: One always hopes for a husband like that, and fortunately I have one, which is very nice indeed.

Mr. Civiletti: Very handy, very efficient.

Ms. Shakow: And who were your peers? Do you still have friends from that period? Most of them, I guess, are still here. Or, are they?

Mr. Civiletti: Murnaghan was also to some extent a mentor. And at the same time I left the firm, within a year Kaplan went on the bench and within eighteen months Murnaghan, who was in the litigation division, went on the Fourth Circuit and he was the mentor really to Sarbanes, whereas Eney was my mentor, although I had a good relationship with Frank. So, the three people out of the litigation group left at or about the same time. So, it left some young folks to step up and mature faster, one of whom was Fred Motz, who then went on to the

federal bench in Maryland. His wife is on the Fourth Circuit, Diana, and her father was a managing partner at Covington.

Ms. Shakow: And indeed, the chairman of the organization that is compiling all of these oral histories.

Mr. Civiletti: Oh, is that right?

Ms. Shakow: Yes.

Mr. Civiletti: Oh, great.

Ms. Shakow: He's a lovely man.

Mr. Civiletti: So, as to — There's Tom Perkins, who was the business partner and is still in the firm and was a pal of mine; Jim Wright, who's a real estate partner and I played a lot of basketball early on in the firm and we had a pretty good basketball team. He was on the team. Bob Smith, another basketball player. Tony Carey, who was in the firm. He was an environmental lawyer at the time, and so he's still a peer and companion. Bill McCarthy — he and Dick Emory took me to lunch and convinced me to come to Venable. Bill is just retiring this year as a matter of fact, and he has long been the conscience of Venable, an outstanding lawyer and person. But it's starting to thin.

Ms. Shakow: Well. (Laughter) How large was the firm when you left?

Mr. Civiletti: When I left in '77, it was about 70.

Ms. Shakow: I see. And, did you have any women in the firm at that time, either as associates or partners?

Mr. Civiletti: Yes, Nell Strachan, who was on the phone this morning. I think we had Barbara Schlaff, who was a benefits lawyer. Nell is a litigator.

Ms. Shakow: It was still fairly early in the great wave of women who became lawyers.

Mr. Civiletti: Right. I distinctly recall those. Oh, and another one, who's in health care, a third woman whose is a health care lawyer, Connie Baker.

Ms. Shakow: And, how about minorities? Did the firm have any minority lawyers?

Mr. Civiletti: They had a couple, a couple of black lawyers at the time. No Washington office, no suburban office, just the central.

Ms. Shakow: But, still it must have been hard on the firm when the three of you left at the same time.

Mr. Civiletti: Of course. I left first, so I didn't figure that that was hard, just one person leaving. But I can imagine that when three of the more senior people left, all from the same area, that the young folks there felt a little abandoned.

Ms. Shakow: And, of course, you were taking a position where you could not be called and asked for advice, as would have been true if you'd retired.

Mr. Civiletti: I asked everybody in the firm about whether I should take the position or not, and they all said no.

Ms. Shakow: They did?

Mr. Civiletti: They did. They said that people leaving that position would be after the kind of position that I had and it was a step either down or sideways and not an advancement, but had I been offered the position of Deputy Attorney General, then I should take it. Except one partner, and his name was George Doub, and his father was named George C.

Doub, and he was an Assistant Attorney General in the Civil Division back under either Brownell or Rogers, and he said that he thought it would be great fun, that his father had done it and he had been in Washington when his dad did it, and he seemed to love it and enjoy it and have a good time, so he would do it if it was he. And, so, I did it.

Ms. Shakow: Listened to him. Good.

Mr. Civiletti: Listened to him.

Ms. Shakow: I was a summer associate at the Rogers firm in New York, the summer of 1960, when Kennedy was nominated and looked like he was going to win. And, we were all thinking of whether we would go to Washington. At the final lunch the senior partners took four of us to lunch, and I asked the question, "What would you think about going to Washington?" And they were appalled. To a man, they couldn't see any reason at all to come. They were not caught up in the excitement and glamour and everything else. I'm sure they were all Republicans. Finally one man, out of kindness, said to me, "Well, it might be all right to go and work at the IRS for a year or two and then come back and do tax for the rest of your life." That may have been a more prevalent view ten years earlier. Well, that was fifteen years before you had this decision to make.

Mr. Civiletti: Well, I think my partners were thinking about income. At that time an Assistant's job paid \$50,000, I think, and they were thinking about the cost of two homes or two residences, or the commute every day. And they may have been thinking to some extent of self-interest, that we'd be better off if I was at the firm rather than if I was off at some place they didn't know anything about.

Ms. Shakow: And, I suppose that they had enjoyed practicing and assumed that

you would, too. We've talked about some of the cases you worked on during that period while you were still at Venable. Do you have any others that you can think of that were particularly important or interesting?

Mr. Civiletti: Oh, there were tons of products liability cases and fiduciary cases. We represented the Mercantile Safe Deposit & Trust Co. in major challenges to their administration of trusts, which were a large part of their business. One case that was known as the *Madden* case, Mr. Eney and I tried, and we got a directed verdict in the first case, first trial, went on to the Court of Appeals. It was reversed on the ground that the plaintiff should have been given an opportunity to present other witnesses, expert witnesses. The judge had properly found two unqualified and then refused to allow them to present others. And, so it was reversed for a new trial. It was retried. It was a very sad case. The plaintiff was a young associate at Davis Polk in New York. And, so on the retrial he didn't have enough money, I guess, or enough confidence to hire lawyers. He had lawyers in the first trial and they hadn't done a very good job. But in the second trial he represented himself.

Ms. Shakow: What was the nature of the claim?

Mr. Civiletti: A very unusual claim. It was that the Mercantile had sold the Pimlico Race Track for an inadequate price back in 1946, when he was unborn. And he was an heir, and therefore the breach of that fiduciary duty was not extinguished by the establishment of the trust and the death of his father. And so it turned on the valuation of the Pimlico Race Track properties, but it was very complicated because the Jockey Club owned the Preakness and the racing dates. And the Pimlico Race Track didn't own the racing dates and the racing dates didn't own the Track, so it —

Ms. Shakow: And, you can't do business that way.

Mr. Civiletti: Yes. And so, in any event, he tried the case on the retrial and he had an expert this time that did very comprehensive kind of examinations — on the stand for thirty days. And, so then I was to cross-examine him. That was my job. Cross-examination took five days, and I'll never forget it. He had an appraisal book and I had gone through that book twenty times, so I offered the witness the book, and I gave him a red pen, and I would say, "Now on page such and such you have this statement. Isn't it true that your book appears to have no document to support it. Isn't that true?" He would say, "Oh yes, that's an error." I'd say, "Then, will you please just put an X through that part." And, before long, the book was full of Xs, all through it, every page almost had a big X on it, and on the retrial the judge found the witness not credible, no not credible, not probative. And the sad part of the case is that had the young man taken the trust distribution at the time, he would have received \$3 million. Two years later he received nothing.

Ms. Shakow: And was probably in debt.

Mr. Civiletti: And he lost his position at Davis Polk. It was a shame that he had become obsessed by the case.

Ms. Shakow: During these years what was home like? Where did you live? How old were your children then?

Mr. Civiletti: Home was terrific. We lived in Stoneleigh and Roland Park, both northern old-line communities, one just over the line in the county and the second one in the city. The first was smaller, naturally, than the second. We had my daughter, our last child, our third child, was born in December of 1965, so that makes her 36 this year.

Ms. Shakow: I didn't prepare for the math today. (Laughter)

Mr. Civiletti: So, when she came, the house we had in Stoneleigh, which was a lovely house, and as a coincidence, my daughter lives a block away from that house now with her two little children, where she grew up. We moved to Roland Park to a big house, old house in an old established neighborhood and called Goodwood Gardens, which is a pretty place. Now, incidentally, it is a famous house because it's owned by the Baltimore Ravens quarterback, Elvis Grbac and —

Ms. Shakow: I hope he fares better than the Redskins quarterback, who lost his job today.

Mr. Civiletti: I hope so. He'd better do better pretty well soon, too. And, you have our old Ravens quarterback, Tony Banks.

Ms. Shakow: Is that right? I'll have to go check that with my sons, because I don't follow football. Was your home close enough to the office so that commuting wasn't a problem?

Mr. Civiletti: It was close. It was about 15 minutes. We had a big swimming pool along side the house. It was an old house, but it had a big swimming pool, and the kids loved it. They were in the water all the time. So were their pals, sometimes invited and not invited.

Ms. Shakow: Right.

Mr. Civiletti: And it was a lot of fun. Their schools were reasonably close by. So, it was very happy times.

Ms. Shakow: Did they go to public schools?

Mr. Civiletti: They went to different schools at varying ages. Eventually, by the time they hit about the fifth or sixth grade, they all went into private school. But they went to Stoneleigh public school and then they went to Roland Park public school, and then my daughter went to Bryn Mawr and my sons went to Friends, and one son went up to Hagerstown to St. James Academy.

Ms. Shakow: So, you didn't have any personal experience of busing or any of that business.

I just want to set the stage for our next session when we'll talk about your years in the Justice Department by asking, first of all, how you came to be offered the position of Assistant AG for Criminal, and second, what factors went into your decision? You mentioned that you consulted with your partners but what about your life partner and your children? Did this mean a move to Washington for you, and how did they react? Let's go first with Mr. Kirbo. I understand he was influential in convincing you to take this job.

Mr. Civiletti: Yes, he was. I had tried two cases with Mr. Kirbo.

Ms. Shakow: Charles Kirbo, who was a good friend of the President's.

Mr. Civiletti: Who was the personal lawyer for the President and a good friend of Griffin Bell's and a senior litigating partner in King & Spalding, which is the firm that Judge Bell went to when he left the Fifth Circuit. And Mr. Kirbo and I had tried two cases together — his clients but they were in Baltimore, and the cases turned out well, and he and I got along very well. So, when Judge Bell and Mr. Kirbo were unable to find an Attorney General that suited them or suited the President, the President said that Judge Bell would have to be the Attorney General. And, so, he accepted, and he went about choosing the group of people who were going

to be his assistants, and he did it, as I understand it, in two ways. He asked Kirbo and King & Spalding to recommend young lawyers around the country who they thought well of. And then he asked his peers among the federal circuits, including the Fourth Circuit, being my circuit, to recommend young lawyers whom they thought well of as advocates, and when he got a double hit, he interviewed, or if someone recommended that he interview someone, he did. And, so that's how I got this invitation to interview with Griffin Bell, which was a little bit of a surprise because I had not applied for any positions.

Ms. Shakow: I should have thought there were hundreds of people who were anxious to get that kind of offer.

Mr. Civiletti: I guess so.

Ms. Shakow: It's impressive that they did it in such a methodical way based only on talent and not politically.

Mr. Civiletti: I have not seen a document that says that but by hearsay that's what I understand happened.

Ms. Shakow: Well, it stands to reason because you did not play a big role in the Carter campaign. That's very impressive.

Mr. Civiletti: Although I supported the President, I didn't play any campaign role. It was very interesting. Arthur, the Iran counsel from New York —

Ms. Shakow: It begins with an L. I know, it escapes me now, because he went to my law school.

Mr. Civiletti: Anyway, he and I went to the executive suites where Judge Bell was ensconced during his pre-confirmation period, at the same time for an interview. And so

Arthur Liman went in for an interview first, and then I went in. I had my interview, and it went well, and I expressed some reluctance because of money, because I had fairly young children and because I didn't know all that much about the Department of Justice. I had only been in the federal system in Maryland. Judge Bell answered all those questions, "You can always make money, you'll always be there when your children need you, and I'll be the one to decide if you know enough about the Department of Justice." And, anyway, he also did a good thing, an unusual thing. He said, "I'm looking for people to put in a pool, who are willing to serve, and then I'll select from that pool."

Ms. Shakow: I see.

Mr. Civiletti: So, he didn't say, you're going to get a job, or whatever.

Ms. Shakow: So, he didn't hire you specifically for Criminal until later, he was assembling it.

Mr. Civiletti: Until the day he was sworn in, I went into his office. He had called me and said I want you to be at the swearing-in, and we'll talk then, and after all the Georgians got out of there, he finally said, "Ben, come on in here." And so, we sat down. He said, "Ben, I want you to be the head of the Criminal Division." I had thought, maybe Environmental or Lands, since I did condemnation cases and all. Or, maybe Civil. I knew Criminal was a hot spot. So, I said, "Are you sure?" He said, "Yes." So, I said, "O.K."

Ms. Shakow: Well, that's wonderful. That's wonderful.

Mr. Civiletti: But, later on, the Judge tells the wonderful story about this man Arthur, who was — he also tells wonderful stories about Phil Lacovara — but anyway the story goes like this: He said, "Oh, yeah." He said, "Arthur, he's the most wonderful lawyer and he

came to see me when I was getting to become Attorney General, and he told me how wonderful he was, and that he was the best man in the country to be Deputy Attorney General of the United States, and that I would be foolish not to choose him for Deputy. And it was so obvious that he was the right person that he would accept no other position but Deputy Attorney General of the United States. And I thanked him for his interview and for his opinion, but Arthur made one mistake.”

Ms. Shakow: Which was —

Mr. Civiletti: He said, “He put me on terms, when I was the one to be putting people on terms. He forgot who was the Attorney General nominee. It wasn’t him. It was me.”

Ms. Shakow: He did have that reputation, I remember. And Phil Lacovara, was he in the pool, too?

Mr. Civiletti: No, but the Judge would never pronounce Phil Lacovara’s name properly. Whenever he referred to him, he would refer to him as Phil “Lochkorarro.” He said, “Washington’s a funny place.” He said, “The only place I know in the country where you get advanced by quitting.” He said, “If you resign on a point of honor or integrity or whatever, and quit, well then you get a higher position the next time that one is available. Now, take Mr. Phil ‘Lochkorarro.’ He has made his whole career out of quitting.” (Laughter) “He quits. When Mr. Jaworski had his *Watergate* investigation, Mr. Lacovara quit. Then, when the Koreagate investigation was ongoing and he was appointed counsel, he quit. I’m sure he’s going to arrive on the Supreme Court, (Laughter) if he quits enough in the future.”

Ms. Shakow: Well, he once said to me when Scalia was appointed to the Court, he said, “I was going to get that but at the last minute, there was mixup and they gave it to the

wrong Italian with a lot of children.” Because he also had a lot of children.

Mr. Civiletti: He does.

Ms. Shakow: That’s probably why he was quitting often to go back and earn a little money. Well, we’ve come to the conclusion of this session. It is now 11:25. Thank you very much for your time.

Mr. Civiletti; You’re welcome.

Ms. Shakow: And our next session is in mid-October, when we will discuss your years at the Justice Department.

Mr. Civiletti: Okay.

Ms. Shakow: Thank you.

Mr. Civiletti: You’re welcome.

[Tape Ends]