

ORAL HISTORY OF BENJAMIN R. CIVILETTI
THIRD INTERVIEW
OCTOBER 16, 2001

This interview is being conducted on behalf of the Oral History Project for the District of Columbia Circuit. It is the third 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 Tuesday, October 16, 2001, at 10:00 a.m.

Ms. Shakow: When we completed our last session, Ben, you had just been asked by Attorney General Griffin Bell to be Assistant AG for the Criminal Division of the Justice Department. It was January 1977, and you had been working for the past 13 years at the Venable firm in Baltimore. Did you have any second thoughts about taking this job in Washington and returning to the government at that point?

Mr. Civiletti: No. I initially had some reservations. I think we went over about what Judge Bell had said in response to my hesitation, but once I had decided to join the pool and was informed by Judge Bell that he wished me to be the Assistant Attorney General of the Criminal Division, I was ready to go to work.

Ms. Shakow: You didn't prefer another division? Or at least you didn't tell him you preferred another division?

Mr. Civiletti: No, I didn't. I thought that I was better qualified to either head the Civil Division or what was then known as the Lands Division, now the Environmental Division, but I accepted his judgment that he knew what he was doing.

Ms. Shakow: Did taking this job involve a physical move for your family? Did you move?

Mr. Civiletti: Not the family initially. I got a small apartment here in Harbor

Square in Southeast that I used during the week and then went home on weekends.

Ms. Shakow: That was very hard. That was very hard for you and for your family.

Mr. Civiletti: It was, but it's only an hour away to Baltimore to our home so that if any emergencies came up, I could quickly go home. If Gaile wanted to come over and have dinner that was readily doable. And we had the benefit of — Gaile's father was living with us at the time, so our children were about 17, 15 and 10, so that he could handle them for a day or so.

Ms. Shakow: Somebody had to handle them at that age. (Laughter) As we all know. Did you feel right away, even in the position of Assistant AG, a certain loss of privacy by becoming a public figure at that level?

Mr. Civiletti: Yes, I did. But I had expected it, and I'm not a great privacy freak anyway, so that I pretty much had in my mind that anything about me would become public and that proved out to be true in two instances. One, I took my son, when I was deputy, down to Lexington, Virginia, to visit W&L and on the way out we stopped for gas and I didn't have any money and he didn't have any money and the gas man wouldn't accept credit cards. So we wrote him a check and he started to refuse to accept the check and I showed him my credentials and said I'm good for this check. So he accepted it and within two days, Jack Anderson called me and said we are going with the story that you spent the night in Lexington with a young man. I said it's absolutely true. I said go with the story. I said it's my son and we were visiting W&L. As the second proof of lack of privacy, somehow canceled checks found their way into the *New York Times'* hands. And so I got a call just prior to my confirmation as Attorney General from a

reporter from the *Times* and said, “We have checks that are made out to Pamela Liebowitz monthly” in a certain amount “and she lives in Los Angeles. Are you paying Miss Liebowitz?” And I said, “Yes.” And they said well we’ll have to run with that story. And I said, “Well, go ahead.” I said, “She’s my sister and I’m helping her and my mother is helping her and we each pay so much a month for her well-being.” So they said thank you very much. They will check that out.

Ms. Shakow: Two very nice stories. That’s very nice. I’m glad to see that each of the journalists was responsible enough to call you. Were your children enthusiastic about the job and about your being in Washington? Did they want to come and visit you? Bring their friends?

Mr. Civiletti: I think they did. Although I downplayed the job and the role and the importance because I felt that their lives were important and what they were doing was important and so I paid a lot of attention, in the time I had with them, to talk about their lives and what they were doing instead of trying to regale them with problems or issues of the Department of Justice. So I think to a certain extent, until I became Attorney General, when I was in the news a great deal, they just considered it a job and I had work to do and I was lawyering.

Ms. Shakow: What was the confirmation process like for you at this point? I know you went through it three times, but was there opposition?

Mr. Civiletti: No opposition. The only nemesis that I had was Bill Safire who continued to be a nemesis the entire four years.

Ms. Shakow: Why?

Mr. Civiletti: He started with his first column prior to my confirmation as

Assistant Attorney General in the Criminal Division, and the headline of his column was “Carter’s First Coverup.” And he alleged that I was a friend of Paul Sarbanes and had been the campaign manager for Senator Sarbanes and that I was a Democratic politico and that Carter was putting me in charge of the Criminal Division to cover up allegations of wrongdoing by Bert Lance in the peanut warehouse, or whatever. And so I got a tremendous number of letters from people like Joe Tydings and Bill Marbury saying that that was a lot of nonsense. And Safire had a number of questions to ask that he posed for the committee and the committee asked the questions, such as would I keep them informed of important criminal investigations, and I said no. And would I promise to — Koreagate was hot at the time — and would I promise to indict congressmen, and I said no. So it went on like that.

Ms. Shakow: Surprising that the senators would go along with asking you those questions. Anyone who was a lawyer would know —

Mr. Civiletti: There’s nothing to lose by asking them, I guess.

Ms. Shakow: An important Washington columnist to please.

Mr. Civiletti: Yes. And curry a little favor with.

Ms. Shakow: You had no relationship with him before this? You didn’t know him at all.

Mr. Civiletti: None. Never met him. Never talked to him. He never talked with me.

Ms. Shakow: He had, of course, been Nixon’s speech writer. Wasn’t any problem that you had with Nixon during those years that got his back up?

Mr. Civiletti: No.

Ms. Shakow: Well, it must have been a slow day, I guess that's what it was like. So you were confirmed on a voice vote?

Mr. Civiletti: Pretty much.

Ms. Shakow: It has been said that you were handed a number of hot potatoes when you arrived at the Justice Department. And one that came up almost immediately was the matter you just alluded to and that is Bert Lance, who was a close personal friend of President Carter's and I believe head of OMB. Was that the position he had?

Mr. Civiletti: Right.

Mr. Shakow: Can you tell us about that case? Did you get any interference from the White House?

Mr. Civiletti: No. I had no communication with the White House about the case, and I had very little communication with the Attorney General about the case. The case was investigated not by the Criminal Division as I recall, but by the U.S. Attorney in the Georgia District. Although maybe the Fraud Section of the Criminal Division was kept advised. I had very little to do with the case and don't remember much of the details except it had to do with banking and false statements and records regarding banking. But it was quite a scandal and it led eventually to Lance's resignation.

Ms. Shakow: Was he a personal friend of Griffin Bell's as well as the President's?

Mr. Civiletti: No.

Ms. Shakow: He did resign under some pressure, but I believe he was also indicted and tried.

Mr. Civiletti: I believe he was indicted. And I don't even remember the outcome.

Ms. Shakow: He was acquitted, which was kind of a surprise I guess. Do you believe he was treated fairly by the prosecutors, the press, the Congress, or do you think he was a scapegoat? Or do you have any thoughts at all. Maybe you don't.

Mr. Civiletti: I really don't have much of an opinion. My view would be based on my belief in the integrity of the process. And so I think there was probable cause to believe he committed crimes. But everybody's entitled to their fair day in court and although the government has a high rate of conviction, they don't convict everybody. When you go into public life, you assume the risks of that adventure. And one of the risks is that the spotlight would be on you and you will be charged with something which will be either correct or maybe less than correct.

Ms. Shakow: Do you recall a case involving Smith Bagley, who's the heir to a tobacco fortune?

Mr. Civiletti: I remember it vaguely. It's much like the Lance case in that it was handled, I think, by the U.S. Attorney. The Department had pretty much hands-off.

Ms. Shakow: Do you remember what the charges were?

Mr. Civiletti: No. I think campaign contribution illegalities.

Ms. Shakow: Okay. That figures. There was also a scandal involving campaign contributions that was dubbed "Koreagate." You also mentioned that earlier. What was that about?

Mr. Civiletti: I'm thoroughly familiar with Koreagate because it was handled by

the Public Integrity Section of the Department of Justice and it was a boiling matter when I became Assistant Attorney General. The investigation had been going on for maybe a year during the Ford administration under Dick Thornburgh. And by the time I was confirmed, there were reports that 100 congressmen had been bribed by a Korean, South Korean rice dealer named Tongsun Park. Congress was up in arms about it. The *Washington Post* was all over the story. So I became, in effect, the head of that investigation along with Paul Michel. And one of the problems was that Tongsun Park had gone back to Korea and we had no extradition treaty with Korea and he wasn't coming to the United States. So we strengthened the investigation. I went up on the Hill a couple of times to report on the process — what we were doing and the people involved, not in terms of identifying details or individuals —

Ms. Shakow: Excuse me, to report in public sessions or informal?

Mr. Civiletti: Public sessions.

Ms. Shakow: Were you called, or —

Mr. Civiletti: As the task force. I was threatened to be subpoenaed but I was called up there and Judge Bell went up once with me and then I gave the report the next time I went up by myself. We simply went after the investigation very vigorously. I went to Korea in the fall of 1977 and spent two weeks there negotiating to get Tongsun Park back unsuccessfully.

Ms. Shakow: Did you actually meet with him or just with his lawyers?

Mr. Civiletti: No. I met with the government to try to hammer out an agreement to get him back. They did not think — the Koreans did not think — that I could return to the United States without suffering a terrible loss of face and therefore, they hung on to the last minute. And I remember, as I had said many times, I have to leave at a certain time. When that

time came, I got up and packed up and was ready to leave. And they said, “Well come and see the Attorney General of Korea. He wants to speak with you.” He talked with me for a few minutes and I looked at my watch and I said my plane is leaving in 45 minutes and I must get to the airport. They said don’t worry about your plane. We’ve held the plane. That discussion was unsuccessful. I left and within a couple of months, with the cooperation of the State Department, we arrived at an agreement, the conditions of which were that Tongsun Park was to undergo lie detector tests in Korea and then return to the United States to testify in grand juries and before the Congress. So we did all of that and we got him back. We had about six or eight successful prosecutions of one kind or another.

Ms. Shakow: But not of Mr. Park? Was he prosecuted?

Mr. Civiletti: No. He got immunity.

Ms. Shakow: I see. That was part of the deal.

Mr. Civiletti: That was part of the deal.

Ms. Shakow: I see. I seem to remember there were girls involved in the scandal as well as money. At least one girl in particular.

Mr. Civiletti: Yeah. I remember that vaguely. One woman in particular who was

—

Ms. Shakow: A friend to all?

Mr. Civiletti: No. She was a girlfriend of Tongsun Park’s, or at least a companion of Tongsun Park’s. She was a very beautiful or attractive woman. I never met her, but he was a very dapper man, extraordinarily well groomed, always had plenty of money.

Ms. Shakow: A great party giver.

Mr. Civiletti: A party giver and he entertained at a private club in Georgetown a great deal and she was there with him. And I remember when we brought our own polygraph examiner with us and the first thing he did in the first polygraph session was he asked Mr. Park to take his sunglasses off. He always wore sunglasses, so he took those off. And then he said, well would you mind taking your jacket off because we have to put these devices on. And then he said, would you mind taking your shirt off. So he took his silk shirt off. Then he said he said would you mind taking your undershirt off so that we can put these devices on. So, in effect, he stripped him of his defenses and of his facade.

Ms. Shakow: Were you there at the time?

Mr. Civiletti: I was there.

Ms. Shakow: Even though I am very suspicious of lie detector tests, did he pass this test?

Mr. Civiletti: Yes.

Ms. Shakow: Which is why you were willing to grant him immunity.

Mr. Civiletti: Right. And we didn't do one, we did ten tests there on all different kinds of subjects. And, of course, we did them with some known facts as to each subject thrown in so it would be a reliable test.

Ms. Shakow: Do you recall who was indicted then convicted in this scandal?

Mr. Civiletti: I don't. I remember a congressman named Flood from Pennsylvania.

Ms. Shakow: Dan Flood and he wore a cape. Do you remember that?

Mr. Civiletti: And he had a mustache.

Ms. Shakow: That he kind of twirled as he swung the cape around probably.

There was also a congressman named Hébert from Louisiana. I believe they were both defeated.

Neither was convicted in this but they were —

Mr. Civiletti: Oh, I think Flood was convicted.

Ms. Shakow: Was he?

Mr. Civiletti: I think so. I don't know. I don't remember Hébert.

Ms. Shakow: I think Hébert was in the rice business in Louisiana.

Mr. Civiletti: And allegedly he had bribed these congressmen in order to allow more rice to come in from Korea.

Ms. Shakow: Do you think this case had anything to do with increasing interest today in campaign reform, or —

Mr. Civiletti: No.

Ms. Shakow: Or it was just a flash in the pan.

Mr. Civiletti: It was closer to a bribery case.

Ms. Shakow: Finally, in those first couple of years, you had to deal with a case of the President's brother, Billy Carter. Case is perhaps the wrong word to use. The matter of Billy Carter. What was he supposed to have done?

Mr. Civiletti: Well, Billy Carter was a character. He was an alcoholic and he was always spouting off about this, that and the other thing and I think probably as a younger brother was somewhat jealous of the success, in comparison to his rather failed life, of his older brother, the President.

Ms. Shakow: You know, this is something of a pattern. Lyndon Johnson had a

brother named Sam Houston Johnson. Nixon had his brother. Clinton had his brother. It's very interesting. The younger brother of the President syndrome.

Mr. Civiletti: That came up — Billy Carter came up from time to time in minor ways but it didn't become a really noteworthy matter until July of 1980, in the middle of the last year of my Attorney Generalship. Before that, the hot matters that we had inherited as Assistant Attorney General were Koreagate, which you mentioned, and an investigation called COINTELPRO, and the Weathermen in which finally we indicted the two deputy directors of the FBI and the former director of the FBI, Bert Lance, that you mentioned. Richard Helms was under investigation, the head of the CIA, for lying to Congress about Allende's business and Pinochet's business and whether the CIA had supported Pinochet and caused trouble for Allende, who, of course, was assassinated by a car bomb in the United States.

Ms. Shakow: His ambassador, I believe, was assassinated here.

Mr. Civiletti: The ambassador, yes.

Ms. Shakow: He was murdered in the course of the coup, I think.

Mr. Civiletti: And so those investigations, carryover investigations, took a lot of effort and were quite unpopular, some of them. COINTELPRO was very unpopular especially, and it had been in the Civil Rights Division. Judge Bell took it out of the Civil Rights Division and put it in the Criminal Division and eventually we convicted the two deputy directors of the FBI. Thereafter, President Reagan pardoned them during his term. But it was a successful investigation and what they had done were black bag jobs in trying to track down the Weathermen by, in effect, burglaries of their family and their friends and then covering it up. When I was Deputy and then Attorney General, we started an investigation which became

enormously controversial which was called Abscam and that was the investigation where we had a sheik, an FBI agent dressed as a sheik who was seeking to have special immigration laws passed to allow people to come into the country and was paying congressmen or senators, as the case may be, \$50,000 or \$100,000, and it was a very successful investigation, but two things happened that tainted it. One was that we had safeguards to the root process built in where there was a review, and we weren't targeting congressmen, but we were letting it be known that payment was available, and then if the congressmen or senator came forward, we would make sure of the bribery by surveillance cameras.

Ms. Shakow: You were concerned about charges of entrapment.

Mr. Civiletti: Right. So the review process was to be a multi-layered thing which takes time. Well, the investigators and the people who were coming forward to seek this possible discussion about special immigration laws got way ahead of the review process. And so the first thing you know there were 30 interviews and only 5 had gone through the supervision and the review process. And that became troublesome. The second problem was that the investigation leaked. And it leaked I think to Tony Morrow of *Newsday* in Long Island. So he had the whole story of the investigation and all the people who had been interviewed and that, in effect, stopped the investigation, the combination of the two matters. There were great discovery hearings about entrapment and all the rest and the prosecutions that we made, which again were about six or eight, including Senator Williams and a congressman from Florida.

I had to begin an investigation, and appointed Dick Blumenthal who was the U.S. Attorney for Connecticut and who is now the Attorney General of Connecticut to conduct a leak investigation. And we found a leaker.

Ms. Shakow: You did? Someone right in the Department?

Mr. Civiletti: Yes.

Ms. Shakow: Why was it being run from New York instead of Washington?

Mr. Civiletti: I think because it started as an organized crime investigation and centered in New York and New Jersey. I don't know the reason initially other than it started with — I can't remember the name of the very fine investigator now, it slips my mind, I may come back to it — and he was in charge of it. And he was sited in New York and New Jersey so we left it there. And that's where the surveillance trailers were set up. And there is the famous line when the congressman from Florida came in, had the discussion. They gave him \$50,000, and he put it in his jacket coat pockets, and he buttoned his coat, and then he patted where the money was and he said, "Does it show?" And we had all of that on camera, so he was a — remember that?

Ms. Shakow: I remember that. And I remember a film of the money being spread out on a coffee table and it looked like a zillion dollars. That was really a very marvelous case.

Mr. Civiletti: Then we started Greylord.

Ms. Shakow: May I go back to COINTELPRO? Was it thought by you or the Department or the public in general that the FBI and perhaps the CIA, although not so much in this country, operated this way most of the time, that they cut corners?

Mr. Civiletti: No. I think that it was a case where, which is the grave danger to freedom and civil rights, the atrocity or magnitude of the danger is so great that it justifies the means. The Weathermen were terribly disruptive, terribly frightening until the explosion in New York, which blew half of them up. And so there was enormous public pressure on the FBI to

have some success in that investigation, in finding them, and they were having no success. So, they determined through these black bag jobs I think, although I won't say it was unique, it certainly was rare for the Bureau to adopt that kind of illegal means.

Ms. Shakow: Do you recall, going back to the Nixon administration, that a man named Daniel Ellsberg, who was the source of the Pentagon Papers in effect, that his home was broken into, his psychiatrist's office was ransacked and his files disappeared — a number of those incidents. Was that the FBI? I cannot recall.

Mr. Civiletti: I do not recall.

Ms. Shakow: It would have been a little bit earlier, I guess.

Mr. Civiletti: I have a vague recollection that it was not the Bureau. It may have been local police or some other authority, but not the Bureau.

Ms. Shakow: What happened to Dick Helms? Was he convicted?

Mr. Civiletti: He was convicted.

Ms. Shakow: But he never went to prison, is that right?

Mr. Civiletti: Right. Helms was, of course, as the head of the CIA, he was represented by Edward Bennett Williams and we had a very strong case against Helms for perjury. But he had a very strong defense which was known as graymail, not blackmail, graymail, saying that if you charge me with these violations, to defend myself I will have to reveal all the national security secrets and that I was only doing my duty and as directed by the commander in chief. Well, that kind of case, if it goes to the President, is iffy as to whether it would be authorized and probably not authorized under the standards at the time. So I sat down with Edward Bennett Williams and showed him the strength of the case and also showed him the

parts that we could prove without getting involved, I thought, in national security. If it had ever gone to the President, we would not have been able to proceed with the case, so I was playing a little bit of bluff with Williams. And Williams finally said, “Well, if you can find a minor offense, Helms will plead guilty.” So we did. We scoured the Criminal Code and found, in effect, a misdemeanor provision that said if you provide misinformation or fail to provide all the information to the Congress then you have violated this misdemeanor. We went before the judge and Helms pleaded guilty. He was fined \$3,000 or so, and so we had a successful prosecution to uphold the rule of law. But Williams kind of trumped us because outside the courtroom he said that the \$3,000 fine was going to be paid by contributions from the men and women of the CIA, and that Helms would wear this conviction as a badge of honor. So he made the best of his situation and we made the best of ours.

Ms. Shakow: He did survive very nicely and he’s still around.

Mr. Civiletti: Is he?

Ms. Shakow: Yes. I see him every once in a while. We have mutual friends.

Mr. Civiletti: Graymail and that type of barrier resulted in our development of a statute that allows for a better handling of that defense and restriction of national security and excerpting documents and things of that kind to make those prosecutions more effective.

Ms. Shakow: And that statute has been used very effectively.

Mr. Civiletti: Upheld. Yes, very effectively.

Ms. Shakow: Do you recall any close calls in investigations that turned out okay?

Mr. Civiletti: Not investigations, but two interesting incidents. One involved a Russian Aeroflot full of Russian tourists, I guess, and dancers. And a man named Godunov, who

was a ballet dancer, declared that he wanted to defect to the United States and his wife was on the airplane and the doors had closed. But he said that his wife wanted to defect, too, so we surrounded the Aeroflot with military and they had armed men inside the jet at LaGuardia — I'm not sure if it was LaGuardia or Kennedy. In any event, 72 hours went by with this intensive negotiation. They're insisting that since the gates were closed, the doors were closed, that they were in international jurisdiction. We were insisting they were on the ground in the United States, they were under United States jurisdiction. So we were on high alert as to that matter. Finally, we developed a compromise whereby we moved buses up against the airplane and opened the door to the airplane and the door of the bus, such as the buses out at Dulles, and the woman came out and there were representatives from both sides and she said, "No, I don't want to defect, I want to go back to my parents." So, the crisis was over after 72 hours and they shut the doors and the plane took off and that was the end of that.

Ms. Shakow: But her husband stayed.

Mr. Civiletti: Her husband stayed and became a fairly successful ballet dancer here. The other was Prairie Fire where we had two — Prairie Fire was a group of western extremists who were going to create chaos and havoc by assassinating public figures. And Governor Brown was the first one who was on the target list in California.

Ms. Shakow: Jerry Brown or Pat Brown?

Mr. Civiletti: Jerry Brown. And we had two agents who had been under cover with Prairie Fire for two years and they were supposed to be sharpshooters. So it came a time toward the end of those two years where they were asked by the leaders to train other extremists in rifle fire. FBI Director Webster came over to the Justice Department and Attorney General

Bell was still there, I was the Deputy and said, “What do we do? If we don’t train, we endanger the lives of these two agents or we have to abort the undercover investigation. If we do train them and someone is killed, we will be blamed for having trained them how to actually be sharpshooters.” So Judge Bell said, “Well, what do you think Ben?” And I said, “Well give me a few minutes.” So I went down to my office and said, “Well, I don’t know anything about rifles or rifle shots or training. They could tell me anything and I wouldn’t know whether it was accurate or not accurate.” So I went back up and I said to Webster and Judge Bell, I said, “Let’s mistrain them. Let’s keep going and mistrain them. Tell them to shoot high or low or squeeze the trigger quickly or backwards.” And that worked. They went further into Los Angeles and caught people with rifles and we arrested them all.

Ms. Shakow: And I assume Jerry Brown, Governor Brown, knew of this threat to his life or were you keeping that quiet, too?

Mr. Civiletti: I don’t remember. I think he did at the last few minutes, the last hour. If you want to turn to the two things that dominated the last six months of my Attorney Generalship —

Ms. Shakow: May we go back to —

Mr. Civiletti: For Billy Carter and the hostage circumstances in Iran.

Ms. Shakow: Right. I would like to talk though, about a couple of things that came up earlier. One is the case of Hamilton Jordan. Tell me about that. He was President Carter’s chief of staff and was accused of using cocaine in New York?

Mr. Civiletti: Hamilton was very young when he was the chief of staff, as was Jody Powell. And to some extent they were — although great advisers, they had the image of

cowboys. In fact they appeared on the cover of *Rolling Stone* as Butch Cassidy and the Sundance Kid, all dressed up in regalia. And that didn't work particularly well to Hamilton's advantage when these two creeps in New York in Studio 54, which was a hot spot in New York, run and owned by Ian Schrager, I think and a second man —

Ms. Shakow: Rubell?

Mr. Civiletti: Rubell, that's right. And they were under investigation by Bob Fiske, who was the U.S. Attorney in the Southern District of New York, for income tax evasion in owning this very fancy night club. And they were represented by that disgrace to the legal profession Roy Cohn.

Ms. Shakow: Oh, my.

Mr. Civiletti: And I got a call from Bob Fiske one late afternoon saying that Cohn had told him that he had evidence and proof that Hamilton Jordan had used cocaine in Studio 54 and that they would not make it public if the investigation of his clients was closed. Fiske said, "What do you want me to do?" And I told Fiske, "Tell him to go to hell." And I said, "This triggers the new law that had been passed in 1978, which was then known as the Independent Prosecutor Act which President Carter had agreed, as part of his campaign, to make legislative." Well, under the terms and conditions of that Act, that allowed me to do a preliminary investigation for about 90 days and then make a report to the court.

Ms. Shakow: To see if these charges were serious or had any basis at all?

Mr. Civiletti: Well, the standard was something to the effect to see either whether there was reasonable cause or probable cause to believe that the accusations were true or whether further investigation was necessary. So I called the President. He was on the *Dixie Bell* on the

Mississippi at the time with Jodie Powell and Hamilton was with him. I told him —

Ms. Shakow: It was a steamship or the — a sternwheeler?

Mr. Civiletti: It was a wheeler. He was on some kind of a political trip up and down the Mississippi and stopping from time to time. So anyway, I talked to him and said, “Don’t talk to Hamilton and don’t talk to — let me talk to Jodie.” And Jodie was supposed to have accompanied Hamilton at least part of the time in Studio 54, not necessarily using cocaine. And I said, “At the next stop in Memphis, the Bureau will be there to interview you, Jodie and Hamilton.” So that went on and after 90 days, a dozen different leads came up about Hamilton’s doing this and Hamilton’s doing that. We ran them all down and pretty much proved that the allegation regarding Studio 54 was nonsense. There was a drug addict that made the allegation, had been convicted half a dozen times before. Cohn was a bum. These guys were under indictment, and so forth. But we couldn’t run down every rabbit. So I could not say that no further investigation was necessary and I had to report that since further investigation was necessary, we had to appoint the independent prosecutor. That was the first one appointed under that law. And he did a very good and very fast and through investigation.

Ms. Shakow: Who was he? Do you remember?

Mr. Civiletti: I don’t remember. His name may come to me. In any event, he found that there were no grounds to proceed against Hamilton but it adversely affected the whole business. It adversely affected Hamilton’s effectiveness and his —

Ms. Shakow: And his pocketbook.

Mr. Civiletti: And his pocketbook, and his relationship with the Department was severed, in effect. So it was too bad. (Arthur Christy)

Ms. Shakow: So he had to leave the White House?

Mr. Civiletti: No. He was able to stay.

Ms. Shakow: I see. My recollection is that he lost a good bit of money because he had to hire his own counsel.

Mr. Civiletti: Right.

Ms. Shakow: And later Congress amended the law.

Mr. Civiletti: As a result of that and a couple of others.

Ms. Shakow: Yes. To say that if, in fact, you were not indicted, then the government would cover your legal expenses.

Mr. Civiletti: That's right. And Meese was a beneficiary of that change in the law.

Ms. Shakow: That's right because he was involved but not indicted. But some people who were indicted but not convicted, I think, still had to pay their own legal expenses.

Mr. Civiletti: I'm not sure how the law applied.

Ms. Shakow: I remember the Secretary of Labor, Donovan, was that his name? Ray or Roy Donovan. He was actually convicted but then the conviction was reversed on appeal and he wound up having to pay that — you don't remember who Hamilton Jordan's lawyer was by any chance, do you? Big-time lawyer.

Mr. Civiletti: I don't.

Ms. Shakow: What do you think of that independent counsel law which has since been repealed?

Mr. Civiletti: I think it should have been repealed. I think the power of the —

The Attorney General has the power to appoint whenever he feels the Department cannot do the job. The power to appoint an independent counsel, in any event, and to remove him only for dereliction of duty.

Ms. Shakow: And to supervise it, to some extent.

Mr. Civiletti: Well, in a modest way. If you are going to do that, the very purpose is to not put any real shackles on the independent counsel from a monitoring standpoint, and Judge Bell used that power prior to the statute being passed in the peanut warehouse investigation of President Carter. Paul — not Connelly, but the former U.S. Attorney in the Southern District, Republican, was appointed by Judge Bell to do the peanut investigation and that power exists today and has been utilized historically and is sufficient.

Ms. Shakow: The danger, of course, is a runaway independent counsel.

Mr. Civiletti: The trouble with the statute is that the court picks an individual, and there are a good many examples of this under the statute, who may not have any investigatory experience, have no prosecutorial experience. It is his or her day in the sunshine, so to speak, and having no experience, the ordinary standards of evaluating evidence and probable cause and the ability to convict are absent, so you have a very dangerous kind of a circumstance.

Ms. Shakow: And indeed it is open-ended, I think, some of these investigations, that started quite some many years ago have not been — and the problem too with Walsh had to do with expenses. He was spending a fortune.

Mr. Civiletti: Then the more recent one in *Whitewater*, who was the special prosecutor there?

Ms. Shakow: Not Starr?

Mr. Civiletti: Starr had no prosecutory experience, no investigatory experience, never tried a jury case in his life.

Ms. Shakow: Of course he had been a judge. But he was an appeals court judge.

Mr. Civiletti: He had been a judge, an appellate judge and had been in the Department of Justice as the counselor to Smith, Attorney General Smith. Generally, he is a very bright and able lawyer.

Ms. Shakow: Do you remember a case involving a Dr. Peter Bourne in the White House? This did not rise to the level of a prosecution.

Mr. Civiletti: I do remember that. Bourne was a drug legalization advocate as I recall.

Ms. Shakow: And he took it into his own hands.

Mr. Civiletti: But I don't remember how he got involved. Was it the use of drugs?

Ms. Shakow: No. He wrote prescriptions for various people in his office and used false names. My recollection was he was forced to leave the White House, of course, when this came out, but I don't believe he was prosecuted. You don't recall?

Mr. Civiletti: I don't recall.

Ms. Shakow: Tell me about the controversy — going back again to your earlier days involving David Marston, the holdover U.S. Attorney in Philadelphia?

Mr. Civiletti: The Marston Affair.

Ms. Shakow: He was a Republican appointee who refused to resign?

Mr. Civiletti: Well, the controversy developed while I was in Korea. Judge Bell, in due course, in every administration, the U.S. Attorneys change. Most of them change. Some of them change very promptly and leave early. Others stay in the position until a successor is found. In due course, as I understand it, Marston was asked to leave by Judge Bell. He refused. Judge Bell fired him or had the President fire him, one or the other. Marston then went to the press and claimed that he was fired because he was investigating and about to prosecute a Democratic congressman. The Democratic congressman had met with President Carter once and had met with Judge Bell, so that there was some semblance of a fact basis for the allegation.

Ms. Shakow: To go back a little bit, U.S. Attorneys are appointed for four-year terms. Is that correct?

Mr. Civiletti: No. They are appointed at the pleasure of the President.

Ms. Shakow: I thought they were appointed for a fixed term and he said his term hadn't been up. So he should have resigned on January 20.

Mr. Civiletti: Well, as I say, some of them stay until their replacement is ready. Some of them stay until they are asked to resign. Some resign on January 20 and in some administrations the Attorney General says I want all of your resignations on "X" date.

Ms. Shakow: But in this case, to narrow it down a little, the Attorney General said exactly that to David Marston, I want your resignation. And he refused to give it?

Mr. Civiletti: Yes. And he refused to give it, and so then he was discharged. And Bob Fiske, on the other hand, was a holdover who stayed for many months.

Ms. Shakow: Fiske in New York.

Mr. Civiletti: In New York. And held over for more than a year and was a

superb prosecutor. In any event, that of course created a hullabaloo, the accusations of Marston, and Judge Bell called me in Korea and said did I know anything about Marston and his investigation of the congressman in Philadelphia. And I said that I didn't remember anything about it or know anything about it. And I had never discussed it with Judge Bell, not having such knowledge. And then one of my assistants, Timmy Baker out of Baltimore, whom I had asked to join me as an assistant in charge of Organized Crime, said that he had briefed me — his recollection was that he had briefed me on the Marston investigation in the course of briefing me on a whole series of investigations. And I maintained that I did not recall that in any way and I didn't recall it. I'm not saying that he didn't do it. I just didn't — it just didn't stick in my mind. Safire picked that up, that inconsistency, naturally, between myself and Baker and said somebody is lying here. They can't both be true. He either said it or he didn't say it and who said what to whom, and was it a cover-up of Judge Bell's firing Marston. So, that resulted in my confirmation as — I was nominated in November and then renominated in January of '78, and I went from January through May before the Senate Judiciary Committee, with Malcolm Wallop being the only non-lawyer out of 17 members of the committee conducting an inquiry, and I appeared some 52 times, or something like that.

Ms. Shakow: This was your appointment as Attorney General.

Mr. Civiletti: No, as Deputy. He would ask me all kinds of questions dealing with Marston and asked for records and information. So they ran the Marston Affair pretty well, and Marston then ran later on for mayor of Philadelphia. He lost, but he made a big play out of it. Finally, in May, *Time* magazine ran a story in which they had me in the hall with my hands in my back pockets pacing and reported an incident that occurred during the last appearance before

the Congress in which Wallop made a very long utterance. I sat there and looked at him, and he sat there and looked at me and he said, "Well are you going to answer that question?" And I said, "You haven't asked a question." And so they had the reporter read back the statement and it wasn't a question.

Ms. Shakow: It was a harangue.

Mr. Civiletti: A harangue. And so *Time* printed it and it embarrassed Wallop, I guess and the Republicans, and they ended the inquiry and confirmed me within a couple of weeks.

Ms. Shakow: And did he vote for you?

Mr. Civiletti: No.

Ms. Shakow: He was the one that voted against you.

Mr. Civiletti: Well, I think a number of them voted against me for Deputy. It was about —

Ms. Shakow: Twenty-two Republican senators. All because of the Marston thing.

Mr. Civiletti: I think so.

Ms. Shakow: Who were the other Assistant AGs in the Carter administration that you worked with before you became Attorney General? Who were your colleagues?

Mr. Civiletti: Pat Wald was the Assistant Attorney General of the Legislative Division. John Shenefield was the Assistant Attorney General of the Antitrust Division. John Harmon was the Assistant Attorney General of the Office of Legal Counsel. Barbara Babcock was the Assistant Attorney General of the Civil Division. Assistant Attorney General of the Tax

Division — I can see him, but I've forgotten his name.

Ms. Shakow: Did any of them become personal friends? Were you particularly impressed by any of them? Are you ever in contact with them?

Mr. Civiletti: I was impressed with Pat Wald. And, of course, I've been in contact with her from time to time. Shenefield was very impressive and he became my Associate Attorney General when I became Attorney General. Carl Ferguson was the Assistant Attorney General of the Tax Division. A very competent man.

Ms. Shakow: Pat Wald is an example I always use to young women lawyers because she and I are friends and she said she took ten years off and had five children and then came back and her career just went right to the top.

Mr. Civiletti: Wonderful.

Ms. Shakow: She's a very lovely person. Who was the Director of the FBI during these years? Was it Webster?

Mr. Civiletti: Webster.

Ms. Shakow: The whole time? Did you get along with him?

Mr. Civiletti: Yes. In fact I had recommended him.

Ms. Shakow: Tell me about that. How did that happen? He had been a judge.

Mr. Civiletti: They had a commission and the commission picked a United States Marshal and it was headed by a man named Shapiro, the head of Dupont. A blue ribbon commission because the President had committed in the campaign to get rid of the Director of the FBI.

Ms. Shakow: Who had been — was that Gray?

Mr. Civiletti: No. The man after Gray.

Ms. Shakow: Oh, I know. Saxby. No. A man from Kansas City.*

Mr. Civiletti: A great big fellow. Clarence Kelley. So the commission recommended this United States Marshal. Judge Bell and the President didn't think much of him, and so Judge Bell got Frank Johnson to agree to become head of the FBI who was then, I think, a United States District Court judge. I don't think he was — he may have been on the Fifth Circuit.

Ms. Shakow: We are talking about the same Frank Johnson.

Mr. Civiletti: The same Frank Johnson. The great civil rights judge. And that was terrific. But before Frank Johnson was picked, Judge Bell said, "Well, we don't want the blue ribbon commission then. The President would like you to consider being the head of the FBI."

Ms. Shakow: You?

Mr. Civiletti: Me. And I said I'm really not a cops and robbers guy. I really like practicing law and being a lawyer, and I wouldn't do a good job in that position. He said all right. Well then he got Frank Johnson. Frank Johnson had a physical examination, and he had a very deep hernia that had been undiscovered so he went into the hospital. He had an operation, a three-week recuperative period in the hospital and rethought his life and his efforts, and decided to turn down the FBI directorship. So the Attorney General came knocking at my door and said, "Frank Johnson is not going to be the head of the Bureau. I want you to be the head of the Bureau. And I know your reservations, but we are confident you can do a good job." And I

*Kelley.

said, “Well, I think I can find a really good person to be the head of the Bureau if you’ll give me 30 days.” So the Attorney General said, “That’s all you have, 30 days.” I had met Webster earlier and Webster is the All-American Boy. Just a great resume, great everything, Republican. He was terrific. So, I got a hold of him. I had met him through the Bar Association. He was an Eighth Circuit judge at the time. So I put Judge Bell onto him and showed him all these credentials and resume, and he was a circuit judge, as was Judge Bell. So Judge Bell called him — and he used the line that he was so effective in using and Webster said, “Well, why would I give up a lifetime appointment to become the head of the FBI?”, and Judge Bell said, “To serve your country. What you’ve always done all your life.” So Webster came in and became the head of the FBI and saved me.

Ms. Shakow: Otherwise, we wouldn’t be sitting right here today. Well that’s a nice story. How about the Solicitor General’s Office? Was Wade McCree the S.G. in those days?

Mr. Civiletti: Yes.

Ms. Shakow: Did he serve in the Carter administration, the whole four years?

Mr. Civiletti: Yes.

Ms. Shakow: And you liked him?

Mr. Civiletti: I liked him very much. We had — he was living in the Southwest and so from time to time I would walk with him up to the Department of Justice and we would discuss life or philosophy. He was a wonderful man.

Ms. Shakow: Did he become a judge or had he been a judge?

Mr. Civiletti: He had been a judge.

Ms. Shakow: Okay. He was from Ohio? Detroit.

Mr. Civiletti: Detroit, Michigan.

Ms. Shakow: When you rose from Assistant Attorney General to Deputy Attorney General, was that a promotion that you more or less expected? Who had been the deputy and why did he leave?

Mr. Civiletti: The deputy at the beginning was a man named Pete Flaherty, who had been the Mayor of Pittsburgh and had been in his younger days a prosecutor, a state prosecutor and had a master's degree in administration. So Judge Bell felt that that combination was ideal for Deputy. That he could run the Department reasonably well and that he was familiar with criminal proceedings and criminal law which was important. Pete Flaherty thought the job was — as I later discovered — thought the job was similar to the job that Justice White had had under Attorney General Kennedy which was the judges, the appointment of judges, and testimony and appearances and work with the Congress, which was right up Flaherty's alley. When the administration started in February, March, April, it became apparent that they did not have a meeting of the minds on the nature of the job and the nature of the role that Judge Bell expected, having been a circuit court judge for so long. He expected Flaherty to be able to present cases, present issues of legal substance and evidentiary evaluations and assessments and Flaherty, his talents were in other areas and not in that type of presentation. So by July it was obvious to each of them that it was not working. And so Flaherty left in September of 1977, and Judge Bell asked me to become Deputy Attorney General in October and I was nominated, I think in November. During the time I was negotiating Tongsun Park out of Korea and then confirmation hearings were not held, and Christmas came and I was renominated in January, and

that's when the Marston Affair broke. So I acted as Acting Deputy and Assistant Attorney General of the Criminal Division from September or so through May of '78.

Ms. Shakow: Two great jobs at once. And you were not a full year as Assistant AG, you just had eight or nine months.

Mr. Civiletti: I was, in effect, because I wasn't confirmed as Deputy until May, so I had come in around February of '77 and I was still Assistant AG. And then I picked Phil Heymann to become my successor in the Criminal Division, and then Phil came back as Deputy Attorney General under Janet Reno, and that didn't work out.

Ms. Shakow: How did you know him?

Mr. Civiletti: I didn't. I just knew his reputation and he had been on the Jaworski *Watergate* prosecutive team and was recommended by Chuck Ruff. Chuck I got to come over to the Department of Justice as my Associate Deputy Attorney General when he was at HEW at the time.

Ms. Shakow: So that was Chuck's first experience in the Justice Department.

Mr. Civiletti: No. He had been the last *Watergate* prosecutor and had been in the Department and was picked to do that job out of the Department, I believe.

Ms. Shakow: A final question about this period. In 1978, Congress created an enormous number of new federal judges. What was the Department's role in filling those slots? It was the greatest group of vacancies ever available to any President. And even though President Carter didn't get to nominate a Supreme Court Justice, he did name many judges.

Mr. Civiletti: There were very few areas involving the Justice Department that President Carter was interested in intensely. One was judgeships. And he had the advantage of

having Griffin Bell who had been a circuit court judge for 17 years as the Attorney General so he relied very heavily on Judge Bell's vetting process and judgment and recommendations. With regard to judgeships, President Carter had two innovations. One was the commissions, presidential commissions for federal circuit court judges that were established in every circuit, and so he said that he would pick judges that were recommended by these presidential commissions instead of United States senators.

Ms. Shakow: Only at the circuit level. And who sat on these commissions? Are they judges or prominent lawyers?

Mr. Civiletti: Walsh was the head of the commission in New York at the time. Very prominent lawyers, citizens, public figures.

Ms. Shakow: Did they ever nominate themselves?

Mr. Civiletti: No. The second requirement or standard that he imposed was he wanted much greater diversity on the bench. Minorities, women, academics, a mixture.

(Tape Ends)