ROBERT S. BENNETT, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit

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The Historical Society of the
District of Columbia Circuit

United States Courts
District of Columbia Circuit

Robert S. Bennett, Esquire

Interviews conducted by:
David E. Birenbaum, Esquire

May 15, and May 30, 2003

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. T he Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcripts are available at other locations.

Such original audio tapes of the interviews as exist, as well as the original 3.5" diskettes of the transcripts (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

INTERVIEWEE ORAL HISTORY AGREEMENT

Historical Society of The District of Columbia Circuit

Oral History Agreement of Robert Bennett

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Robert Bennett, do hereby grant and convey to the Society and its successors and assigns al of my rights, title and interest in the tape including literary rights and copyrights. All copies of the tapes, transcripts and diskette are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tapes, transcripts and diskette and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author

3. I authorize the Society to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

Robert L. Bennett, March 3, 2004

Robert Bennett **Date**

& I reserve the right to make use of my own oral history for any purpose I deem appropriate

SWORN TO AND SUBSCRIBED before me this 3 day of March, 2004.

Jeffrey P. Neudorfer
Notary Public, District of Columbia
My Commission Expires 10-14-04

Notary Public

My Commission expires 10/14/04

ACCEPTED this 8th day of December, 2004, by ~~E. Barrett Prettyman, Jr.~~ Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

~~E. Barrett Prettyman, Jr.~~
Stephen J. Pollak

Schedule A

Tape recordings and transcripts resulting from 2 interviews of Robert Bennett on the following dates:

Date (Month, Day, Year) & Title	Number of Tapes	Pages of Transcript
Thursday, May 15, 2003	2	28
Friday, May 15, 2003	1	14

INTERVIEWER ORAL HISTORY AGREEMENT

Historical Society of the District of Columbia Circuit

Oral History of Robert Bennett

1. Having agreed to conduct an oral history interview with Robert Bennett for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (thereinafter "the Society"), I, David E. Birenbaum, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer diskette of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, including publication on the internet, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims that have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

David E. Birenbaum 3/8/04
David E. Birenbaum Date

SWORN TO AND SUBSCRIBED before me this
8TH day of March, 2004.

Notary Public

My Commission expires April 30, 2004

ACCEPTED this 8th day of December, 2004, by ~~E. Barrett Prettyman, Jr.~~ Stephen S. Pollak,
President of the Historical Society of the District of Columbia Circuit.

~~E. Barrett Prettyman, Jr.~~
Stephen S. Pollak

Schedule A

Tape recordings and transcripts resulting from 2 interviews of Robert Bennett on the following dates:

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ORAL HISTORY OF ROBERT S. BENNETT
FIRST INTERVIEW
MAY 15, 2003

This is the first interview of the Oral History of Robert S. Bennett as part of the Oral History Project of the D.C. Circuit Historical Society. It is being held by David E. Birenbaum on Thursday, May 15, 2003. The tape and any transcripts made from the tape are confidential and governed by the wishes of Mr. Bennett, which will be expressed in the form of a written donative instrument.

Mr. Birenbaum: Bob, why don't we start with your early years, if we can? I know you were born in or grew up in Brooklyn.

Mr. Bennett: I was born and raised in Brooklyn, New York. I left New York when I was 17 to come down to Washington.

Mr. Birenbaum: Could you tell me something about your family? I know you have a very prominent brother, what about other siblings?

Mr. Bennett: It is just Bill and me.

Mr. Birenbaum: I see. And your parents?

Mr. Bennett: Both are deceased. My mother, Nancy Walsh, and my dad, F. Robert Bennett. Dad worked for Manufacturers Hanover Trust Company in New York, which previously was Manufacturers Trust Company. And before that he worked at Chase Bank, and my mother was a homemaker. But later, after their divorce, she worked. We moved to the Washington, D.C. area in 1957, when I was to begin college at Georgetown

University.

Mr. Birenbaum: What occasioned the move?

Mr. Bennett: It was a combination of factors. I was starting Georgetown, and my step-grandfather died. Grandmother had two sons in Washington, who were very well-known doctors. One was John Walsh, who was an obstetrician and gynecologist, best known for the delivery of several children of President and Mrs. Kennedy and Robert and Ethel Kennedy. And my other uncle, William B. Walsh, was the founder of Project HOPE, best known for its *HOPE* ship. When my grandfather died, my mother decided that it would be best for grandma to come down to Washington so she could be with her sons. There was nothing really holding mother in New York, and I was starting Georgetown, so all these forces came together and we moved.

Mr. Birenbaum: You went then to grade school and high school in New York?

Mr. Bennett: I did.

Mr. Birenbaum: Where did you go?

Mr. Bennett: Well, grade school I went to several different schools. I went to Public Schools 38 and 92. After public school I attended Holy Cross Boys' School run by the Xaverian Brothers.

Mr. Birenbaum: That was a private school?

Mr. Bennett: Yes. After I finished Holy Cross, I went to Brooklyn Prep High School,

which was a Jesuit high school. It no longer exists. It was a wonderful place, which made a big difference in my life. After suffering a football injury, I joined the debating team. I had hundreds of debates and cross-examined hundreds of fellow debaters before I ever got to college. We were New York State debating champs. We really took it seriously. And I like to think that probably that experience had something to do with my becoming a lawyer.

Mr. Birenbaum: Certainly sounds that way.

Mr. Bennett: I'm very proud to say I was picked as the Alumnus of the Year some years ago. On that same occasion, they gave Daniel Berrigan, S.J., an award. He had been one of my teachers. He was a great protester. I'll never forget his acceptance speech. He thanked everyone and commented that this was the first time the award has been given to a felon. He had been convicted of various things connected with his civil disobedience protesting the Vietnam War. He was a wonderful teacher. There was no sense of his being a protester, or at least if there was, we students didn't notice it.

Mr. Birenbaum: What did he teach?

Mr. Bennett: As I recollect, it was Theology and English, but I'm no longer certain. In

the classroom you knew you were in the presence of a very special person.

Mr. Birenbaum: And, then you went to Georgetown?

Mr. Bennett: And then I came down here in '57 and went to Georgetown.

Mr. Birenbaum: You lived on campus?

Mr. Bennett: I did live on campus for most of the time. For periods, I lived off campus, and then I graduated from Georgetown and went to UVA Law School for my first year of law school in 1961-62.

Mr. Birenbaum: Before we get there just in terms of Georgetown itself, your experience there, did you continue debating?

Mr. Bennett: Yes. I was the president of the debating society. And I'll tell you an interesting story about Brooklyn Prep. If I could just go back for a minute. One of my protégés on the debating team is now the president of NYU, John Sexton. I saw John recently. I continued debating as the president of the debating society. It wasn't quite as intense. It was sort of Triple A or Double A ball compared to Brooklyn Prep. That was the majors.

Mr. Birenbaum: So you are still a New Yorker after all these years? (laughter)

Mr. Bennett: Yes, absolutely.

Mr. Birenbaum: That is a New York perspective of Washington.

Mr. Bennett: Yes.

Mr. Birenbaum: What did you major in?

Mr. Bennett: I majored in the social sciences focusing on political science; but after my first year, I went into pre-med.

Mr. Birenbaum: Were there any experiences you had there-- I'm thinking of teachers, relationships with teachers, courses, or colleagues -- that you think had a bearing on what you wound up doing?

Mr. Bennett: No, I don't really think so. I'll tell you what I did do. I would frequently go down to the courts and watch trials. And what was interesting is that I had planned on being a doctor. My grandmother wanted me to be a doctor so I took pre-med for a while.

Mr. Birenbaum: Like all good Jewish boys --

Mr. Bennett: Yes, but she wasn't Jewish. So then the light went on one day-- hey, I'm not hanging around hospitals, I'm going down to watch trials -- so I decided I'd go into law. But I enjoyed Georgetown very much. It was great. They had wonderful teachers. I unfortunately did not take full advantage of what was available to me. I was in such a hurry to get out, such a hurry to finish, such a hurry to get on with my life.

Mr. Birenbaum: Did you do any theology work there or did you just take the --

Mr. Bennett: Not really.

Mr. Birenbaum: Has religion played much of a role in your life?

Mr. Bennett: Well, right now it is a big part of my life because I'm on the National Review Board helping the Catholic Church on the sexual abuse scandal. That is not what you meant. Many of my beliefs learned and fostered in Catholic schools had a big impact, but religion in an institutional sense has not had much of an impact in later years. But I do believe the Jesuits at Brooklyn Prep High School had a big impact on my life.

Mr. Birenbaum: That is what I was thinking.

Mr. Bennett: The priests and scholastics were devoted to us and spent hundreds and hundreds of hours with us. They taught us to write and think clearly and impressed upon us the difference between right and wrong. They didn't have wives, they didn't have children to go home to. They were there for you. They were there all hours of the day and night. We were their family.

Mr. Birenbaum: You mentioned that you were thinking of going to medical school, but once that plan was abandoned, I take it there was no doubt in your mind about going to law school?

Mr. Bennett: There was never any other interest. I went to UVA law school and did reasonably well. But I should have worked harder. I was just in such a

hurry to get out and into the working world and be independent.

Mr. Birenbaum: How did you feel, with that in mind, being in Charlottesville? Mr. Bennett: On the social side, it was kind of difficult, to be completely honest with you. First of all, I didn't have any money. And you know there were a lot of "first family of Virginia" kids down there who had plenty of money to spend. It was not an easy school for somebody who didn't have a car or extra spending money. But it was a wonderful law school. I thought I had a magnificent year of instruction from wonderful teachers. I thought those first- year teachers at UVA were absolutely great. It was the single best year of teaching that I ever had.

Mr. Birenbaum: Any courses stand out in your mind now?

Mr. Bennett: What stands out were a few professors. One was Hardy Cross Dillard who taught contracts. This was a gifted teacher. He was just wonderful. So, he stands out. When my mother got quite ill, I moved back to Washington so I could be closer to her. I transferred to Georgetown Law School, and that is where I finished.

Mr. Birenbaum: Was that two years at Georgetown?

Mr. Bennett: It was two.

Mr. Birenbaum: How did you find Georgetown Law School?

Mr. Bennett: I liked it. I thought it was excellent, but I was also working and supporting myself I worked for a very famous New Deal lawyer and personality, Tommy "The Cork:" Corcoran. He headed the firm known as Corcoran, Foley, Youngman & Rowe. I don't know how you define my job. I was a man Friday. I drove him around and I supervised the office law clerks and handled some of the office filing. He took me to the Democratic Convention. It was a real eye opener. **It** was an amazing firm. **It** was a Democratic firm. Ed Foley was at one time the head of the National Democratic Committee. And it was very interesting. Corcoran was a very, very interesting, unique individual.

Mr. Birenbaum: Did he talk with you about his experiences in the New Deal?

Mr. Bennett: Yes, you know, he often talked with me in those late hours. He was a perpetual motion machine. The irony is that had I been hired to do legal research, I wouldn't have had many of the opportunities I had. When you are with someone at one o'clock in the morning, it's different. And he was ve1y good to me.

Mr. Bennett: When I was finishing law school, Corcoran said, "You worked hard for me and I want to do something for you. I think you should go to Harvard Law

School for a graduate degree."

Mr. Birenbaum: I went to Harvard.

Mr. Bennett: What year did you graduate?

Mr. Birenbaum: 1962.

Mr. Bennett: Okay, so I would have been there 1964 to 1965.

Mr. Birenbaum: No, I'm 65. Just hit retirement age.

Mr. Bennett: So he said, "Why don't you go up there for a year?" And he paid me to do work while I was there. And it really wasn't work-- he did that to make me feel better. I would read the papers and keep track of some of the cases and legislation he was working on. I would cut things out of the papers. I'm sure my job was designed to make me just feel better about accepting his generosity. That is what it was. He also had a daughter at Harvard, Margaret. And I think he liked the idea of my being up there. That was actually a very interesting year. There I did run into a very remarkable person, Professor Paul Freund.

Mr. Birenbaum: I had him, too.

Mr. Birenbaum: I thought he was wonderful.

Mr. Bennett: And I took his course in constitutional litigation. And he would look at you and say, "Now Mr. Bennett, what do you think are the constitutional implications" of this or that, and I felt like saying, "Why

on earth are you asking me? I just want to sit here and listen to you." You know, my views are of no importance. But he was a very humble fellow and really wanted to hear your views.

Mr. Birenbaum: I thought he had the extraordinary wisdom to be humble. He was a very wise person. Did you ever visit him in his office?

Mr. Bennett: I did.

Mr. Birenbaum: As I remember, it was full of books, floor to ceiling.

Mr. Bennett: "Wise" is a good word. There, too, I felt that I was in the presence of somebody pretty special. Corcoran had told me a story that Freund had been offered the Solicitor General job and turned it down. Had he taken it, he might well have been on the Supreme Court. Joe Rauh, who is one of my heroes -- I don't know if you made the connection, but his son Carl is my law partner. And Carl and I have been together for a long time. We are wedded at the hip. When Carl left the Justice Department, I said, "Look, do you want to come with me?" He said, "Sure." I got to know Joe really well through Carl. We developed an independent relationship.

Mr. Birenbaum: Yes, I knew him a bit.

Mr. Bennett: And so Joe confirmed the story about Freund and the Supreme Court.

Mr. Birenbaum: I thought he always wanted to be on the Court.

Mr. Bennett: He did. I think he was politically naive. That's what I feel. He didn't realize that if you didn't do this, you might not get that. He was quite a man. When I left the U.S. Attorney's Office-- Am I jumping around too much?

Mr. Birenbaum: No, no, no. Please, it doesn't matter.

Mr. Bennett: Because one thing connects to another.

Mr. Birenbaum: Yeah, I know.

Mr. Bennett: When I left the U.S. Attorney's Office, I went to Hogan & Hartson. Some people liked me a lot, and others I am sure didn't like the idea of a lateral in those days. But I remember being told that Freund was at a dinner party with the head partner at Hogan, and Freund mentioned that he was aware I had joined the firm and said, "Bob, he was really one of the best students I had." After that I was looked on in a different light. I mean Paul Freund saying I'm one of his better students. What he said could not possibly be true because he taught some of the best, but I've never forgotten that story.

Mr. Birenbaum: I had a similar experience with Henry Hart, who was the person whom I most looked up to when I was there.

Mr. Bennett: I had Hart, as well. I must be honest with you. He would say, "Good morning," and I would never understand another word. I thought his materials were brilliant, but he was very difficult to understand. Several of us would then go to Sachs' class on legal process. I would love to talk to you someday about Hart because he was such a patrician.

Mr. Birenbaum: He came from Montana. And he clerked for, I think, Brandeis, as did Paul Freund. And I just found him to be a person of such incredible integrity. It was inspiring. Intellectual integrity. A lot of people had difficulty understanding him. But I had him in a seminar so I had---

Mr. Bennett: But you sure knew you were in the presence of someone pretty special.

Mr. Birenbaum: He was. Any other special courses? I am not familiar with the LLM program.

Mr. Bennett: Well, I'm not sure if they have it anymore. This was a Master of Laws program which had 75 students. It wasn't focused on any one area. It was primarily for foreign students. And 50 of the 75 were from other countries, and 25 were Americans. So it was a very interesting program because you

met a lot of people you might not otherwise meet. And I actually met Elizabeth Dole, now Senator, who was a student at Harvard at the time. And I helped her on her campaign for student office. I helped her get the votes of the foreign students. She was running even then. And I remember that she was very impressive and still is.

Mr. Birenbaum: How did you like living in Cambridge?

Mr. Bennett: I did, I mean, you know, I thought it was a very fascinating, interesting place. I liked it. I had already passed the bar, so it was sort of a wonderful, free period for me. I didn't like the weather that much. **It** was cold, and the cold went right through you. I liked it, I did like it, and I made some good friends there, and I had a good time. I thought there was a vitality. I liked it. Now, again, I didn't have much money, so I was just living in a dorm, which wasn't the best. I liked it, but I was a little bit sick of school by then. Margaret Corcoran had a lovely apartment nearby, so that helped a little bit. She was a lot of fun.

Mr. Birenbaum: I guess you did have a job with Corcoran when you were there, of sorts.

Mr. Bennett: It wasn't, you know, it really wasn't much of a job. I monitored his matters in the press.

Mr. Birenbaum: So then you took a clerkship?

Mr. Bennett: His brother, Howard Corcoran, was made a federal judge while I was at

Harvard. Howard was a partner at the film, so he knew me. He asked me if would like to be his law clerk.

Mr. Birenbaum: Were you his first?

Mr. Bennett: Yes. I came in and clerked for him two years. And he was a very able, very good judge, very fair man, had a very judicious temperament.

Mr. Birenbaum: How did you relate to him in the sense of what you did? Did you draft opinions, did you --

Mr. Bennett: Do you remember those days? Those were days when we would try murder and rape cases in the federal court. But in those days, only misdemeanor criminal cases and civil cases under $10,000 were tried in the Court of General Sessions. Instead of having typical federal cases, the overwhelming part of the docket were serious criminal felony cases. Since this was not an area of Judge Corcoran's expertise, I played a significant role in drafting instructions and drafting opinions. We were learning together. But there is no question he was the judge.

Mr. Birenbaum: I had the same experience because I was the second clerk for a district court judge, and he had been a trial lawyer.

Mr. Bennett: Who was that?

Mr. Birenbaum: Joe Blumenfeld in Connecticut.

Mr. Bennett: So you know it is just a wonderful, wonderful experience and a great job. He never said just write something and then he would just sign it, I'm not

suggesting that. But I played a key role. As you know, it is a lonely job to be a judge. He would talk to me and sought my opinion. It was a wonderful experience. He felt sentencing was the most important part of his job.

Mr. Birenbaum: How did he handle dispositions or sentencing?

Mr. Bennett: I think he listened a lot to what the probation officer came up with. He viewed sentencing as a critical part of his job. While I could make a pitch, I had little impact on his sentencing decisions.

Mr. Birenbaum: So you got to see a lot of Washington trial lawyers?

Mr. Bennett: I did, but I can't say that I saw too many of them more than a few times. This was a large court, with lots of lawyers appearing before it.

Mr. Birenbaum: So then you went to Hogan from the clerkship?

Mr. Bennett: No, I went to the U.S. Attorney's office.

Mr. Birenbaum: Of course.

Mr. Bennett: I went in when David Bress was the U.S. Attorney. And he offered me a job as an Assistant United States Attorney. Those were some of the greatest years of my life.

Mr. Birenbaum: How long were you there?

Mr. Bennett: About three-and-a-half years. But by the time I left, I had a lot of seniority. It was unusual. There was a period before my time when

assistant U.S. attorneys were there for many years. I can mention them by name. And remember I used to go down to court. I did that in law school, as well as I believe in my last year in college. Most of them had been in the office for years. In my era it was different. And then the years after I left, it went back a little bit to the old days. During my first year I was assigned to the Court of General Sessions, where you exercised the most discretion. Ironically, you had little experience and knowledge. I mean you were deciding if cops made a bad arrest, you decided whether individuals should be charged or not. The best part was going to court. I remember I had 30 jury trials and many more non-jury trials.

Mr. Birenbaum: So you tried 30 in the first year?

Mr. Bennett: Now, they weren't lengthy and complicated cases. In addition to the many trials, there were many more non-jury trials, and probably 150 preliminary hearings. It was just a fabulous experience for a young lawyer.

Mr. Birenbaum: What kind of cases did you handle in subsequent years?

Mr. Bennett: I wanted to move on after 12 months, which was the normal time to leave and then we had those terrible riots in the city. And they wanted

to keep a few of the senior people to stay to handle the cases arising out of the riot, so they asked me to stay on. So I stayed on a few more months. There were hundreds and hundreds of cases as a result of the riots. And so finally when that died down, then I went into the appellate section. I had a whole different experience. All you did was write briefs and argue before the appellate courts. I don't know about you, but now if I write a brief you get two hours here, you get an hour there. I don't even do that anymore. I have somebody doing drafts for me. It was wonderful. It was a great experience. And I had about 20 arguments in the U.S. Court of Appeals and probably 15 in what was then the District of Columbia Court of Appeals. It was a great, great experience.

Mr. Birenbaum: Any particular cases stand out in your mind now?

Mr. Bennett: No particular cases really stand out. But what does stand out is the judges. Those were the days of Judges Bazelon and Skelly Wright, who were focusing on the criminal law. Judge Bazelon had a real interest in insanity issues, so you would have a case that didn't on its face appear to have anything to do with insanity, but the next thing you !mew you are at oral argument, and Judge Bazelon would have found something which could advance his goals in the area. And if you appeared before Judge Bazelon or

Judge Burger, you would win or lose depending on who was the third judge. Those were the days when criminal law was really developing. And the D.C. Circuit was very much in the forefront on criminal law issues. You know Judge Bazelon was not a big fan of the U.S. Attorney's Office. You would be up there, and he would throw a curve ball right at your head, and then you would duck, and then a conservative judge, like Warren Burger, would throw you a pitch you could hit out of the park. If you got a Paul McGowan on the panel or even Judge Leventhal, it made for a very interesting argument and a result difficult to predict. Leventhal was a liberal, but I always felt he was judging a case and had no agenda like Bazelon or Burger. I never had the feeling there was a cause with Leventhal. Or if there was, he left it back home, you know. I thought he was an excellent judge. So, it was a great experience to argue those cases. I left appellate after nine months and went to the district court section of the office. Oh yes, I do remember one case. When I first got to the appellate section, there was a collateral attack filed by a prisoner in his own hand trying to reverse his conviction. And there was a famous Supreme Court case, I think it was the *Kent* case, it dealt with juveniles. What I do remember is that it was a very routine piece of paper that was filed. It was no different from the hundreds of others that were filed. I prepared a very simple response. All of a sudden I get handed a brilliant brief. And it's signed by law professor Paul Bender. I later learned that Judge Bazelon or Judge Wright had called someone at the law school to

see if one of their professors would take this case on appeal. I won, but it wasn't because I wrote the best brief-- I surely did not.

Mr. Birenbaum: How did you like being a prosecutor?

Mr. Bennett: I loved it. I really did love it. And the truth of the matter is that you can do a lot of good. Many of your decisions, such as whether or not to place charges, really affect lives. Very often the cops would just send these people down to our office because they didn't want to be bothered. And it was very interesting. I remember vividly in those days the gay community. I was single, and I was 30, and I felt so sorry for gay men. The cops were often brutal to them. And you know they just were not afforded any civil rights out on the street. And if they got into a fight with their lover, the cops just didn't want to be bothered. "Go down and get a warrant from the U.S. Attorney," they were told. And I'd have these guys coming in and asking for help. I often resolved their property disputes. "You take that and you take that." But that was the real world. I don't know if that is what happens anymore. It was pretty scary because you were exercising power over people. You did a lot of good. One of the funniest stories, I'll tell you, involved Carl Rauh, an assistant with me. Defense attorneys would come to the office looking for Carl because they knew about Joe. Well, Carl was really very tough. And this Mr. Jones, a D.C. cop, 6'5", the intake officer,

would say, "Oh, you want to see Mr. Rauh?" He would smile because he knew what was going to happen. Carl was a lot tougher than I was, but they all assumed that Carl, the son of a great civil rights lawyer, would be a softy. It was a wonderful job. You put away some very bad people. Yes, maybe they are what they are because of social reasons, but some of them were just bad people. They were out there really hurting people, shooting them, cutting them, and I felt good about taking some of them off the street.

Mr. Birenbaum: Did you ever have a situation where your conscience bothered you about what you were doing, in the sense, prosecuting someone you thought really shouldn't have been treated that way?

Mr. Bennett: I never did because the beauty of being a prosecutor was that you had a lot of control over what you do. You don't have to bring a case. And if you have real significant doubts about a case, you can do something about it. But that is a fair question. There were a few instances where you just couldn't drop a case because of your feelings about it. I mean victims have rights. So, there were a few cases where I was uncomfortable with the strength of the evidence. It never ceases to amaze me: the power of eye-witness identification. It is easy for a jury to convict when the victim identifies the defendant. It is powerful in a courtroom. There were a few cases, not many, where I was really concerned about the identification. I remember that I prosecuted one case that bothered me a little bit. The

victim was Cornelius Pitts, who was an African-American business man in the District. He ran the Pitts Motel. In those days, it was the motel where upper-scale African-American visitors stayed when they came to D.C. Two white guys from New York, who may have been with the mob, extorted him for money. In those days, you had almost all Black juries. White people got out of jury duty. The defense lawyers were really bad, and one fell asleep during the trial. I believe those guys were guilty because we had tapes. And it really did bother me because here I have a Black jury, I have a well-liked member of the Black community, and I have these defense lawyers who were not the best. But the evidence was there, and I was satisfied with the conviction.

Mr. Birenbaum: Those were the days before the Public Defender system. How did the lawyer assignment process work?

Mr. Bennett: Well, the defendants relied on lawyers appointed by the judges, but you also had a local public defender office. It had many good lawyers.

Mr. Birenbaum: What was the quality of the representation of the indigent?

Mr. Bennett: If you weren't able to pay and couldn't walk into court with one of the top guys in those days, the representation generally wasn't very good, unless it was a public defender. Certainly, in the Court of General Sessions, representation was often poor. You had what we called Fifth Streeters. A lot of them were pretty bad.

Mr. Birenbaum: So then you never considered staying, I assume, in the U.S. Attorney's Office?

Mr. Bennett: You know after you try several murder cases, you know, you are pretty much an expert in what you are doing, and you want to move on. Also, you realize that there are real limits to what you can make as compared to private practice. I had gotten engaged and wanted to have a family. But also I wanted to climb higher mountains and have new and different challenges.

Mr. Birenbaum: When did you get married?

Mr. Bennett: Well, I was married in 1969.

Mr. Birenbaum: Who is your wife?

Mr. Bennett: Ellen Gilbert Bennett from Columbus, Ohio.

Mr. Birenbaum: She is not a lawyer?

Mr. Bennett: No. She was a high school teacher for a long time and now is a photographer.

Mr. Birenbaum: You have children?

Mr. Bennett: Three daughters.

Mr. Birenbaum: Three daughters? How old are they?

Mr. Bennett: 30, 28 and 25.

Mr. Birenbaum: Any lawyers?

Mr. Bennett: Two

Mr. Birenbaum: They practice here?

Mr. Bennett: Well, the oldest doesn't practice at all. She didn't want to practice. That is Catherine. Catherine is very creative. She works for the William Morris talent agency in New York. The middle daughter, Peggy, practices. She is a legal aid lawyer in New York. She is down at Center Street representing the most unfortunate of the unfortunate.

Mr. Birenbaum: You must be very proud of her.

Mr. Bennett: I am very proud of all my daughters. Peggy represents hundreds of these no-name people. One night she had night court. It was near midnight and there was a little buzz; you could tell something was changing in the courtroom and some more important supervisors appeared. An important DA walks in and it appears they arrested a German woman who was stalking the actor, Richard Gere. So, Peggy was very resourceful. She got the case dropped if her client promised to leave the country. And she got the consulate to agree to pay for the ticket. To make a long story short, the woman collapses. The press had been following them. And they take her picture and her name appears in

the bottom of an article in *Newsday*, "Peggy Bennett." So, I had our firm's graphics department do a blowup of the *Newsday* article. Her name, which you can barely see, is blown up. So I gave it to her and said, "Hang it up in your office." She said, "Are you kidding me?" But someday she will appreciate it. First time her name appeared in the press.

Mr. Birenbaum: And your third daughter?

Mr. Bennett: Sarah. She graduated from Vassar, and for the last couple of years is, I don't know how to define it, is an outdoor educator. She works for an outdoor company. She takes kids down rivers and outdoor trips. She is in the Los Angeles school system, and she is about to go to graduate school for a doctorate degree in psychology.

Mr. Birenbaum: So then your first job in the private sector was with Hogan?

Mr. Bennett: Hogan & Hartson.

Mr. Birenbaum: How did you come to go there?

Mr. Bennett: I asked Tommy Corcoran what I should do. And this would have been after the U.S. Attorney's Office. I went to see him. And he said, "Well, I'd like you to come here, but I'm not sure that it is right for you." He said, "I think you are a trial lawyer." His shop was really a lobbying

shop. And, by the way, Hogan & Hartson is in the same building as Clark Clifford. I represented both Corcoran and Clifford many years later. They were in the same building as each other, but they didn't care for each other. Clifford thought Corcoran was unpolished, and Corcoran thought Clifford was just too full of himself. It was flattering that they both retained me later in life. As I recall it, Corcoran said, "I'll give you 50 grand a year, plus a piece of the action," which in those days was a lot of money. I really didn't want to be a lobbyist. Moreover, I have never made a decision in my life based on money, never. I make more money now than I ever expected I would. But money is not what makes me tick Corcoran said, "I want you to go see a friend of mine." So I went to see John Wilson, who was an old-timer, a real legendary character, one of the most prominent lawyers in Washington. Now he was old! This lawyer is long dead. When I say "real old," you should realize when I went to see him he was probably about my age right now. But he was a real lawyer's lawyer. I think he represented a lot of banks. He was a very sophisticated lawyer. He was not a lobbyist. He had an office, I remember, right out of the *Saturday Evening Post.* And he said, "No, no, you don't want to go with

Tommy." And then I talked to federal judge Bill Jones, with whom I was very close. I later helped found a lecture series at the University of Montana Law School in his honor and in honor of Judge Tamm. So I asked Jones and others for advice, and I decided to accept an offer from Hogan & Hartson.

Mr. Birenbaum: And how did you find it?

Mr. Bennett: I became frustrated after a while. It was a much different firm than it is today. Several good friends are there. I wasn't very happy there. So a couple of fellows had left Hogan, and I joined them. It was the firm that became Dunnells, Duvall, Bennett & Porter. Steve Porter had been at Hogan, and then he went to Williams & Connolly. He is now at Arnold & Porter. And I was at my own firm for a long time.

Mr. Birenbaum: How many years?

Mr. Bennett: Fifteen years or so, and then Carl and I were talking about fanning a smaller firm. We decided to go form a smaller litigation boutique. And then Skadden approached me and asked me if I'd come. I was disinclined, but I agreed to meet with them, and I liked them and decided to give it a shot. It turned out to be a great decision.

Mr. Birenbaum: Well, you were discontented at Hogan because of its size?

Mr. Bennett: Well, it wasn't that so much as the direction of their practice. After

Watergate, they lost their interest in the white-collar practice for many years.

Mr. Birenbaum: Right. But you were looking to form a small firm with Carl and wound up with Skadden?

Mr. Bennett: Its size was one of my big worries. But it has been great because I brought all my people with me. They have all of the benefits of a large firm and still maintain the culture of what we had before. And then there are other things that are great. I didn't have to worry much about hiring and firing. I was bringing a significant amount of money into the Dunnells' firm. I was worried that if something happened to me and I decided to leave to do something different, what would happen. I had first-class people, absolutely tops, and what would happen if I left? Skadden took everybody. They asked how did you get these lawyers. We didn't pay them nearly what Skadden paid. One of the young lawyers who had turned Skadden down earlier enlisted to come with me. Well, I paid attention to the young lawyers. Carl Rauh and I mentored them. We trained them. That is how we got them. And, in addition, we had interesting, high profile cases.

Mr. Birenbaum: How large is your group here?

Mr. Bennett: It's about 55 now. We are in the 55 to 60 range.

Mr. Birenbaum: Is this the entire litigation group here?

Mr. Bennett: Yes. We had started just as a white-collar group.

Mr. Birenbaum: Right.

Mr. Bennett: Then the firm asked Carl and myself if we would integrate with civil litigation. We really didn't have a big civil group, but we had a couple of very excellent civil litigators. But it wasn't really a large group. So we said sure. So now it's really both.

Mr. Birenbaum: Do you do any criminal work?

Mr. Bennett: Yes, we do a lot of criminal work. Most or all of it is very complex. Presently, we are representing Enron and HealthSouth and several others. You know, parallel proceedings where you deal with the SEC, Congress, Justice. White-collar work became profit centers and big firms wanted to have that capacity. You may recall when big defense contractors were getting in trouble.

Mr. Birenbaum: Now you had a couple of public appointments with a select committee and then also for the Foreign Relations Committee in connection with Haig's confirmation. Which was first?

Mr. Bennett The Senate Foreign Relations Committee on the appointment of General Haig to be Secretary of State.

Mr. Birenbaum: Right. How did that come about?

Mr. Bennett: Well, there was another colleague, Hank Schuelke, working for the

committee. And there were a couple of others, Fred Thompson and Mike Madigan on the Republican side. Hank asked me if I had any interest in joining him. So I agreed.

Mr. Birenbaum: That was when you were with your firm after you left Hogan?

Mr. Bennett: Yes.

Mr. Birenbaum: And was that a full-time position? How long did it last?

Mr. Bennett: Some months.

Mr. Birenbaum: Who was Chairman of the Foreign Relations Committee?

Mr. Bennett: I think it was Claiborne Pell.

Mr. Birenbaum: Yes, that must be right, and what did you do?

Mr. Bennett: Well, apparently there were all sorts of tapes, the Nixon tapes, referring to General Haig. In the background were allegations of assassinations in Chile. So there was a definite white-collar criminal aspect.

Mr. Birenbaum: Right.

Mr. Bennett: And so we had to deal with all the issues that might come up.

Mr. Birenbaum: So this was all internal. You didn't play a role in the confirmation in the proceedings or did you?

Mr. Bennett: Yes, but only as support to the Senators on the committee. We were Special Counsel. I was also hired by the Senate Ethics Committee to

handle the Harrison Williams matter arising out of Abscam, and that led to the David Durenberger and Keating Five assignments for the Senate.

Mr. Birenbaum: Was this all in the same committee? The Senate Ethics Committee? Who was the chair of that committee?

Mr. Bennett: For Williams, the Chair was Malcolm Wallop of Wyoming. For Durenberger and Keating, it was Howell Heflin of Alabama. Warren Rudman was the Vice Chair in both Durenberger and Keating.

Mr. Birenbaum: Did you take a leave in the firm for that job?

Mr. Bennett: No, I took it as any other case. And I staffed it with other lawyers at my firm.

Mr. Birenbaum: In the firm? How many did you have? Approximately?

Mr. Bennett: Oh, just a few.

Mr. Birenbaum: Tell me about the investigations. What role did you play? Did you run the investigations?

Mr. Bennett: I and my staff ran the investigations and handled the public hearings.

Mr. Birenbaum: So you were the counsel at that point?

Mr. Bennett: Yes, and I presented the case. That was a very substantial, significant

job.

Mr. Birenbaum: And that grew out of the prior appointment?

Mr. Bennett: Keating came up after the Durenberger investigation. So I was a known commodity.

Mr. Birenbaum: Any observations about that whole experience?

Mr. Bennett: It was a wonderful experience and very challenging. I wasn't a young, young lawyer. But I was a relatively young lawyer. It was a dangerous assignment. "Dangerous" in the sense that we were dealing with pretty powerful Senators who did not like being investigated. Warren Rudman, in his book *Combat,* accurately writes about the Keating case and I recommend it to you.

Mr. Birenbaum: This is probably your first intense experience in a political environment.

Mr. Bennett: Yes, I would say the first intense experience.

Mr. Birenbaum: How did you find that?

Mr. Bennett: Well, I found it very exciting and professionally challenging. Well, I have respect for some members of Congress. In general, it was not an experience that made me feel better about our Congress. I felt worse.

Mr. Birenbaum: How did you feel about the outcome?

Mr. Bennett: Well, I found that the outcome was fair. You know, I thought that it could've been a little tougher. But I think the interesting thing about my recommendation was that it is kind of how it ended up at the end of the day. I felt that Cranston and DeConcini and Riegle really deserved some action against them. And, I didn't think that was true of John McCain or John Glenn. I'll say something very self-serving. I'm really not a self-serving person. But, I was under a lot of pressure. What saved me was that it was open. The press was there. And, I was not going to capitulate about how I felt about things. And I did have support from some members of the committee. I certainly couldn't have done it without that support. The presence of the press was my salvation.

Mr. Birenbaum: Well the electoral process certainly had the last word.

Mr. Bennett: It did.

Mr. Birenbaum: Did you have the sense that what you were investigating was unusual?

Mr. Bennett: Well, I think that there were some unusual aspects. I think that it was unusual to have five powerful senators asking the administrative head of an independent entity to come to their office without an aide and without bringing aides themselves and talking to that head person on behalf of a person who in some fashion was a constituent.

Mr. Birenbaum: There was some interest in California.

Mr. Bennett: Having been told that there was a criminal referral, Glenn and McCain backed off and the others didn't. I didn't feel that it was very wise for them to have the meeting. For me, the critical point was that once the other senators realized it was a criminal referral, they basically backed off. But others did not.

Mr. Birenbaum: Who was your client in that sense?

Mr. Bennett: It was the Senate.

Mr. Birenbaum: Not the committee?

Mr. Bennett: No. I guess the committee, but the committee is part of the Senate.

Mr. Birenbaum: And the committee then speaks through its Chairman?

Mr. Bennett: Chair and the Vice Chair. You know it's supposed to be bipartisan, and they have an even number. So it's not your typical committee, which is uneven in number. The chair comes from the majority party, and the minority member is the vice chair. But it certainly isn't like a typical committee where the minority has little to say.

Mr. Birenbaum: Was that an issue for you -- identifying your- client?

Mr. Bennett: No. My understanding was that you are representing the Senate of the United States of America in acting for this committee.

Mr. Birenbaum: Now which was your first -- you've had a whole succession of cases involving prominent people and various difficulties. What was the first one?

Mr. Bennett: Well, if I could just reword the question just a little bit. I think that the most significant person that really kind of brought me to national attention as a defense lawyer was someone you probably never heard of-- his name was Dominic Paolucci. He was the president of a company. He was a former Navy man, brilliant man, and he worked for a company called Lulejian Associates. He was about to get indicted in the Eastern District in Virginia for allegedly offering a consulting contract to an Admiral Cagle in return for a consulting contract with the Navy. And Cagle, being the seventh highest ranking admiral, it attracted a lot of attention. Paolucci was one of the most respected people in the defense industry. Everybody knew him, and he went to trial. I won the case at trial. And it was a very big case in the Washington community and defense department community.

Mr. Birenbaum: This was the Duvall firm?

Mr. Bennett: That's when I was there. He died several years ago. He and I forged a close relationship. And in winning that case, my name became well known to the defense industry. Following this, I was retained by several defense contractors, including Boeing and BDM.

Mr. Birenbaum: Now tell me about the Boeing case that we are talking about -- that is the one involving the compensation arrangements?

Mr. Bennett: The first Boeing case involved payments to former officers of the company. And then, subsequent to that, we handled a few investigations for them. Then a classified documents case. We still do work for them.

Mr. Birenbaum: How did you get the *Weinberger* representation?

Mr. Bennett: I'm not a hundred percent sure, believe it or not. I like to think that I had a really good reputation by that point in time and was a known quantity. I remember being called by former California judge, Bill Clark, who was a very close friend of Weinberger. Weinberger had just gotten a target letter. That was the most outrageous prosecution I've ever been involved with.

Mr. Birenbaum: I don't remember it anymore, what were the allegations?

Mr. Bennett: Well, all of the allegations were based on his statements to the prosecutor and FBI agents. No charges were based on the underlying events. Cap was opposed to giving arms to Iran. He didn't believe there were moderate Iranians. He opposed it at every step of the way. Lawrence Walsh was appointed as a special prosecutor. He was mean and zealous, and I think had horrendous judgment.

Mr. Birenbaum: So what happened? I do remember the indictment.

Mr. Bennett: The indictment-- We were able to get a major part of the indictment thrown out.

Mr. Birenbaum: On what basis was that?

Mr. Bennett: Let's see -- They did not allege all the elements that had to be

alleged. We got it tossed. And they brought it back, and when they brought it back they put in there all these little references to George Bush, which a lot people felt was done for political reasons because of the upcoming presidential election.

Mr. Birenbaum: And that was fairly close to the elections as I recall.

Mr. Bennett: Yes, that was very close to the elections. And Walsh had always said, "Well, I'm a Republican." But by then he had brought in Jim Brosnahan, who was a very well-known California liberal. He was a very nice guy. He became a friend of mine, actually. He came in and testified against Justice Rehnquist for Chief Justice of the Supreme Court. Walsh squandered his Republican "brownie points" with that appointment.

Mr. Birenbaum: So the indictment then is perfected and issued shortly before the election. Then what happened? You got it dismissed, or did you?

Mr. Bennett: No. No, ultimately he was pardoned.

Mr. Birenbaum: But was that while the indictment was pending?

Mr. Bennett: Yes, that was a couple weeks before trial.

Mr. Birenbaum: A couple weeks before trial? So you were set to go to trial?

Mr. Bennett: Yes.

Mr. Birenbaum: And that was going to be tried here?

Mr. Bennett: Yes.

Mr. Birenbaum: Okay, what came next in terms of that sort of representation? There was Clifford and Altman. You represented both of them?

Mr. Bennett: We did. That was a federal and state case. We got Clifford's case dismissed in both courts.

Mr. Birenbaum: Was this *BCCI* ?

Mr. Bennett: Yes, and then Altman went to trial. I didn't try it. A partner, Mitch Ettinger, tried it with a New York lawyer, Gus Newman, and the jury returned a verdict in favor of Altman.

Mr. Birenbaum: How did Clark Clifford get involved?

Mr. Bennett: Well, let me tell you, I really believe that Clifford and Altman were had too. One of the hardest jobs I have had as a lawyer was to convince people that the great Clark Clifford was fooled. He was still very sharp. A lot of people think that it was Altman's doing. That's not true. I'm absolutely convinced that both of them were innocent. **It** was very sad. He had one of these amazing lives, and it is too bad it had to end on that note.

ORAL HISTORY OF ROBERTS. BENNETT
SECOND INTERVIEW
MAY 30, 2003

This is the second interview of the oral history of Robert S. Bennett as part of the Oral History Project of the D.C. Circuit Historical Society. It is being held by David E. Birenbaum, on Friday, May 30, 2003. This tape and any transcripts from the tape are confidential and governed by the wishes of Mr. Bennett, which will be expressed in the form of a written donative instrument.

Mr. Birenbaum: Bob, when we finished, I think we discussed your representation of Clifford and Altman. There was one other representation of a prominent political figure I wanted to cover before we get to the Paula Jones representation, the Paula Jones case, that is to say, and that's Congressman Rostenkowski. How did that come about, and what was involved?

Mr. Bennett: Well, the Congressman was under investigation for abusing stamp privileges in the House of Representatives. And he had a series of lawyers. I got called to take on the case and met with him. And we were in the case for a while. I can't remember how long. I think I was the fourth lawyer. I worked out an excellent plea agreement but then we had a parting of the ways, and he hired Dan Webb, who eventually worked out a plea agreement. It wasn't Dan's fault, but the government, at this point, was so angry they would not give as good a deal.

Mr. Birenbaum: Was it very different from the settlement that you were discussing with the government?

Mr. Bennett: It was harsher, but that was not Dan's fault.

Mr. Birenbaum: You have acted for prominent Republicans such as Cap Weinberger and Democrats such as Rostenkowski, Clifford, and, of course, the President. Does this present a problem for you as a lawyer? That is to say, you have been in cases which are politically very contentious and you've represented clients who are active participants in each of the two parties.

Mr. Bennett: No. In a sense, it's been a source of pride for me in that I have not been identified as a political person and that people from both parties ask me to represent them.

Mr. Birenbaum: But that hasn't gotten in the way of your clients trusting in you?

Mr. Bennett: No. I don't think that I've ever been questioned, at least to my knowledge, I've never been questioned on that basis. I mean a lawyer is like a doctor. He doesn't work on Republican ailments and Democratic ailments. I work for human beings who have problems. The politics are irrelevant. I've never let that affect any of my decisions because I am not a political person. I have views on issues, but that's never interfered with my ability to call it the way I see it or fully represent a client without regard to politics.

Mr. Birenbaum: While we are on the subject of a prominent Congressman, I want to give

you the chance to expand on something you said when we were together last time, which was your observation of Congress as an institution-- a kind of a lawyer's perspective on how Congress actually operates. You mentioned this was something --

Mr. Bennett: No. I think that it is a very mixed bag. I think there are very strong and good and honorable members on both sides of the aisle who view themselves as statesmen. And then I think there are others who are not statesmen. Sometimes partisan politics gets in the way of good policy. Some committees in Congress are ve1y, very good and others are not. And to use an analogy, I think there are members of Congress who are show horses and others who are work horses.

Mr. Birenbaum: Now, let's come to your representation of the President in the Paula Jones case. How did that come about?

Mr. Bennett: I got a call. I didn't know the President, and I got a call asking me to meet with Mrs. Clinton. Actually, it wasn't the Paula Jones case. **It** was about having a seat at the table as to all of what was going on at the time. I went up and met with her and talked with her. I then met Lloyd Cutler who was White House Counsel at the time, and then I subsequently met the President, and I was retained. And just about the

time I was retained, the Paula Jones case really exploded, and that became my primary responsibility together with being a spokesperson on a variety of issues.

Mr. Birenbaum: Just as a general question, how did you find being the lawyer for the President of the United States?

Mr. Bennett: It was very exciting. I'd have to pinch myself sometimes. Not bad for a kid from Brooklyn.

Mr. Birenbaum: Or anybody else for that matter. How do you compare your representing the President with other figures? Io what way did it influence how you functioned as a lawyer?

Mr. Bennett: Well, as hard to believe as it is, it really didn't. I know that's hard to believe, but because I had already represented a lot of really high-profile people, I wasn't as much in awe of the President as I would otherwise have been. Now let me make it clear: I'm not saying I was blase about it. Every now and then, you'd say, holy smokes, I'm in the White House, in the Oval Office, or I'm talking to the President, he's my client, and you'd say, wow! But I can honestly say it did not affect me in any way in how I handled the case. There were demands on me by virtue of representing the President that have never been placed on me before.

When I represented Clifford and Weinberger, I certainly had to deal with the media. The representation of a sitting President of the United States magnified the pressures. It placed enormous pressure and stress on me because, if you say something and it's not quite right, there are immediate consequences to the President. They may not be permanent, but they're there. So you had to be very, very careful and very, very cautious. It's always best in your cases if you never have to talk to the press. That's my ideal, but when you represent the President, that is just impossible.

Mr. Birenbaum: Well, when you refer to special demands, I presume you mean dealing with the press and the public?

Mr. Bennett: Yes.

Mr. Birenbaum: Did you think of yourself as trying this case before the public, as well as potentially in court?

Mr. Bennett: Well, I don't know that I can answer that yes or no. There is no question that one reason I was hired was to deal with the press and the media. I was hired, in part, because of a perceived view at the White House that I could handle the demands of the media and press. They were not short of good legal talent. Before I ever got in the case, they had a number of very

good lawyers on the case. There was a perception, I was told, that I had a particular expertise in dealing with high-profile matters, which required some kind of response in public. You can say "No comment" in lots of cases, but you can't when you are representing the President of the United States. You must deal with the media when those people who are opposed to the President, for whatever reasons, are seeing to it that every single hour of every single day things are coming out in the press and the media.

Mr. Birenbaum: Did you experience a tension between your role as the person who is dealing with the public in relation to this litigation and I suppose other aspects of it in the role as counsel in an upcoming litigation when asked to express views about issues or disclosures or information that could be prejudicial in terms of litigation?

Mr. Bennett: No.

Mr. Birenbaum: Didn't have that experience?

Mr. Bennett: Never had that experience.

Mr. Birenbaum: Was there a strategy you followed in dealing with the press on this?

Mr. Bennett: I don't have an answer to that. I mean there was no pre-conceived strategy. It was a question of dealing with issues and questions as they

arose. There was no strategic PR plan. We would have been very happy if we never had to talk to the press. So, ours was not one of trying to make a case in the press; it was really one of responding. We were very happy if a day went by and we never had to say anything. That was sort of the goal. We couldn't let stand unrebutted or unresponded to things that were being said which were not true.

Mr. Birenbaum: Did you find yourself in conflict or tension with the President's political advisors about strategy in pursuing the handling of this case?

Mr. Bennett: No, I never perceived that. It was such a unique case; they didn't really get involved very much.

Mr. Birenbaum: How much time did you spend on this case? Did it occupy your full time?

Mr. Bennett: No lawyer can spend full time on a case, as you know. I spent a lot of time. At different points, I was spending 70 percent of my time or 80 percent, and on given days, I spent I00 percent of my time, and there were other times when I wasn't spending as much time.

Mr. Birenbaum: I take it you dealt directly with the President a great deal?

Mr. Bennett: A great deal.

Mr. Birenbaum: How did you find him as a client?

Mr. Bennett: I found him to be very interesting and intelligent. There were some

issues in the case I can't talk about, but I enjoyed my relationship with him.

Mr. Birenbaum: Did you find that he was a good client in the sense of taking your advice?

Mr. Bennett: I don't want to discuss those kinds of issues.

Mr. Birenbaum: I just meant general attitudes.

Mr. Bennett: I don't want to discuss what advice I gave and what advice he took or did not take.

Mr. Birenbaum: Yes. Well, you were dealing with some extremely sensitive material to say the least, and this was the President of the United States. How did you handle that?

Mr. Bennett: What do you mean how did I handle that?

Mr. Birenbaum: Well, did you come out and confront him or raise with him directly the issues?

Mr. Bennett: Again, I don't want to get into conversations with him directly or indirectly. You know I treated him, referring back to an earlier question, I treated him like I would treat any other client in terms of a case. And I didn't say, "Gee, this is the President, I have to treat him differently." I did not treat him differently. I guess there was only one difference: I began every conversation with "Mr. President." Outside of that,

I treated him like I treat other clients.

Mr. Birenbaum: Tell me about the Supreme Court case. You argued that case, didn't you?

Mr. Bennett: I did argue that case.

Mr. Birenbaum: How do you think that it went?

Mr. Bennett: Well, at the time, I thought that it went very well. I was very pleased. I reviewed the transcripts of the argument and I thought that it went very, very well. And those who listened, especially the sophisticated folks who follow the Court, thought it went very well, at least based on the arguments. I thought I was right. I still think I was right. I thought it would be nine-nothing. I was only half tight.

Mr. Birenbaum: How do you assess the Court's reasons today in light of what subsequently occurred?

Mr. Bennett: I just don't know, I believe that they made a fundamental mistake. I believe they really believed that this would not seriously interfere with the conduct of the Presidency. I remember being asked, I think that it was by Mr. Justice Souter, he said something like the following, "Mr. Bennett, gee, I can see where this would take a lot of your time, but I don't see why it would take a lot of the President's." That was just wrong.

Mr. Birenbaum: Were there particular instances that you can recall where you saw conflict between the President's responsibilities as President and his need to defend

himself in the case?

Mr. Bennett: No. I think that the American people were very lucky, actually, that they had a person in office like him. He had tremendous energy. You have heard people say he had the ability to compartmentalize. He really did. I can only guess and wonder about how he handled so much nasty stuff. I certainly never honestly ever felt, "Gee, this case is interfering with this or that." On the other hand, I didn't deal with policy issues. I wasn't in policy meetings. I wasn't asked by him to make decisions on issues outside the case. So I don't know, you have to ask others. But I never saw it interfere with him doing his job.

Mr. Birenbaum: After it was clear that the case was going forward and with no deferral in terms of time, did you examine -- what were your considerations about settlement and what other options were disposed of in this case?

Mr. Bennett: Well, one point that should not be lost, which often gets lost, was the critical importance of getting this case delayed past the election. When the Supreme Court granted cert. in the case, we all felt that we had scored a tremendous victory. And, that no matter what happened down the road, I felt we had accomplished something pretty significant. And that clearly was the view of Lloyd Cutler, the White House Counsel. It was critical that this case not be

played out before the election. So that was critical, and I can't underestimate the importance of that in the minds of everybody. The possibility of settlement was always under review throughout the case. It was something which any good lawyer, especially representing the President, anybody for that matter, has to keep that in mind. The notion of a sitting President actually going to trial was not what you would like to see. So there was always a balance because you have to look at things as they were at that time. You know, if you paid too much money or if the terms were too harsh, you could have negative political impact especially before the election. But there certainly were efforts throughout.

Mr. Birenbaum: You know Professor Dershowitz has been critical of you not having given consideration to the default option. Is that something that you considered?

Mr. Bennett: While it was on the radar screen, no one seriously considered it. No one to my knowledge on the President's team considered default as an option any more than I considered saying that the President was incompetent to stand trial. You can be sure we considered every conceivable option. But the notion that you would allow a sitting President of the United States to

refuse to respond and to allow a judgment, a default, to be entered against him was out of the question. It would have been, in the minds of those around the President, politically absurd. That wasn't a realistic option. There is no way that this President or any of his advisors would have said yes, notwithstanding the allegations of this particularly vicious complaint. That's number one. Number two, I think Dershowitz, who loves the camera and is a world-class second-guesser, even when he doesn't know the facts, incorrectly assumed that his suggestion would end the case. But there was a punitive damages claim in the case, and my reading of Judge Wright is that, after a default, she would allow further discovery of the President on the damages issue. Dershowitz is the only person I know who thought this would make any sense at all. I can't now remember all the reasons. And it was very clear that wouldn't necessarily end the case. But just stepping away from all those reasons--just the notion of the sitting President sitting around saying "Mr. President, she says that you did this, and you have not responded to that." It was just not realistic-- it just didn't make any sense. It would have been a political disaster. And I know of nobody who advocated, nobody, none of the many lawyers we dealt with or talked to who ever suggested that as a realistic option. I heard, but I don't know if it is true, that Dershowitz was just really making every effort in the world to get into the case and was chasing after the President all around Cape Cod in the summer, showing up at every

cocktail party and things like that, trying to get himself in the case.

Mr. Birenbaum: What are your reflections on the deposition and what lead up to it?

Mr. Bennett: Well, I don't really have any reflections. It was part of the case. He was deposed. There was pretty much a general consensus, by the way, that while we would always be visiting settlement, that there was a view that we had a good shot at summary judgment. I agreed with that. So, there was a view that settlement could always be discussed, so let's take a shot at summary judgment, which, as you know, was successful. But again, we were always open to resolving the settlement of the case if we could have done it in a reasonable way. Again, we all thought the deposition went very well.

Mr. Birenbaum: Were you taken by surprise with the questions that focused on Monica Lewinsky or was that something --

Mr. Bennett: No, that was not a surprise at all, because she had been listed on the witness list. At that point, we had a limited amount of time to complete discovery. And both sides had listed on the witness list their potential witnesses. And we talked to lawyers on the other side, and they told us why Monica was on the list. Her being called and the general subject matter was not a surprise.

Mr. Birenbaum: But you were not aware of the relationship that had existed at that

point?

Mr. Bennett: I will not comment on that other than to say that there was an affidavit which her lawyer, Frank Carter, had obtained in order to prevent her being deposed by Paula Jones' lawyer that adamantly denied any sexual relationship.

Mr. Birenbaum: Ultimately you did succeed, as you mentioned. Judge Webber did grant summary judgment, which was appealed. At which stage in the appeal process did you settle the case? Had it been briefed?

Mr. Bennett: Yes, it had been briefed.

Mr. Birenbaum: And how did that settlement come about?

Mr. Bennett: I have trouble remembering all the details, but I think it was a combination of a number of things. Basically, the plaintiff made an offer we could live with, and we wanted to preserve the summary judgment ruling and not take a chance with what we felt was a hostile appellate panel. At one time, we lawyers got quite close to settlement, within the ballpark, and then apparently the rug was pulled out from under Paula Jones' lawyers by her advisor, Susan McMillan, and others. I was told that a right-wing conservative wrote a book saying that panic hit her circles when they heard about the possible settlement. They got into full gear to defeat it from occurring. The next thing you know these lawyers were out and new lawyers were in. And it was these new lawyers that made very

unreasonable demands. The first set of lawyers, Gil Davis and Joe Cammerata, treated the matter like a case and not a cause. By the time we settled the case with the new lawyers, I had the feeling that they were starting to get very disillusioned about the whole thing too; they had spent a ton of money representing Paula. So, I think they were very pleased to get it over with, and there was a settlement resolution which was more reasonable than what had been made earlier. Also, having won on the merits, it was easier for us to settle from a political perspective.

Mr. Birenbaum: I don't recall it having any political salience, the fact that, you know, there was a payment agreed to be made.

Mr. Bennett: The timing was better. We had gotten a summary judgment.

Mr. Birenbaum: Judge Webber ultimately imposed sanctions, which were accepted since you didn't take an appeal. Why was that?

Mr. Bennett: I didn't deal with that. David Kendall did.

Mr. Birenbaum: Oh, I see. Well, speaking of Mr. Kendall, you mentioned you had a role that was broader than the Paula Jones representation. Did it include the impeachment proceedings?

Mr. Bennett: No, it was more of the spokesperson role. David did not like talking to the press. And in fact, he himself asked me from time to time to talk to somebody about an issue, which technically was not in the *Jones* case, so

that is what I meant by that. For example, remember when Mrs. Clinton found the billing records, it was requested that I go on ABC. Things like that, which were not Paula Jones issues.

Mr. Birenbaum: Were you involved in the strategizing of the handling of the impeachment? There was some crossover between the two cases, I'm sure.

Mr. Bennett: No, I had discussions which I don't want to share on generic issues. Impeachment was handled primarily by Chuck Ruff. That issue involved the institution of the Presidency. Representing the President in the Paula Jones case did not directly involve the institution of the Presidency.

Mr. Birenbaum: But there was a clear connection between the two.

Mr. Bennett: Oh, yes. But Chuck Ruff did not want to be involved and did not participate in many meetings on part 1; he took charge of part 2, as he should have. Now there were meetings where some common issues were being talked about. There were a couple of occasions when settlement issues came up in the Paula Jones case where it wasn't just me in the room with the President. This was so because, if you made a decision like that, you had to consider the impact of the decision on the bigger picture. So, there were selective meetings where the President's

White House Counsel and others were present.

Mr. Birenbaum: Let me ask you about Bob Woodward's treatment of the *Jones* litigation and impeachment of the like in his book *In the Shadows of the Presidency*. There were a number of direct quotes that were attributed to you.

Mr. Bennett: Woodward was also a reporter covering the story, and one of my jobs was dealing with people like Bob Woodward on this matter, whether it was a newspaper article, whether it was a magazine or a book. There was no question that part of my mandate, my role, was to deal with these people in the protection of the President's interest. So I did. But I made it very clear to Mr. Woodward and others that I would not, under any circumstances, on any basis, get into discussions I had with the President. I think what he did was for dramatic effect. He drew conclusions about what happened from many sources, and I guess for more dramatic effect or whatever, put some things in quotations. I do recall asking him about that. He felt that he never attributed those statements to me. They were not my quotes or statements which he quoted.

Mr. Birenbaum: What was it like when it was all wrapped up? Did you feel a sense of disappointment that you now had to go on with your life, that you weren't representing the President anymore, was it a letdown?

Mr. Bennett: That is a very good question. You know, I think for a short period of time the answer is yes. I mean you are just on this tremendous high every hour of every day. And then it is over, and you are back to your interesting practice, but it is nothing quite like what I had been through. And so, yes, there was a bit of a letdown. Now I feel that way after every significant case. Again, like I said, everything here was just at a higher level. So, yes, there was a period of letdown.

Mr. Birenbaum: What are you doing now? What have you been doing since?

Mr. Bennett: Getting on with my practice. I represent Enron with their problems, and I am currently representing HealthSouth with theirs. I'm trying to help the Catholic Church on the sexual abuse crises. I have a bunch of other civil and criminal cases.

Mr. Birenbaum: Well, you also have the Olympic committee.

Mr. Bennett: I did an internal investigation regarding allegations involving the U.S. Track and Field regarding doping issues.

Mr. Birenbaum: What did your brother think of you doing all of this work with the President?

Mr. Bennett: Well, it was an interesting dynamic because he was a very outspoken critic of the President.

Mr. Birenbaum: How did the two of you manage that?

Mr. Bennett: We managed it. He has his life, and I have my life.

Mr. Birenbaum: Looking back on this extraordinary career, particularly opportunities

you've had and representations you've had of prominent public officials: executive branch, the President, the legislative branch. What lessons did you learn in terms of what's different, what's special, what talents are required, what approach did you take?

Mr. Bennett: If I can make it, lots of people can make it. That is one lesson. I don't know. I work hard. I have had a lot of great lawyers helping me, and I have been very lucky.

Mr. Birenbaum: I meant something more objective. I would think: that representing politicians in cases which are political, as well as legal, calls for an approach that is somewhat different than what most lawyers are called upon to do.

Mr. Bennett: Well, I think one skill that you need is in dealing with the media. With these public figures, it is not as private. The politicians always have aides all around them whom you need to deal with. Ironically, the President was an exception. It's just such a unique situation given the subject matter. I think that had the subject matter been different, I think that I would have never met with him or rarely met with him one-on-one. It would have been more the White House Counsel or other staff members. I think that the subject matter was such that it was very special. I think: when you are dealing with a public figure, you cannot underestimate how important their reputation is to them and how much they care about the press coverage. They feel that the media

coverage is very important.

Mr. Birenbaum: Well, I would think:, and you just hinted one of them, that there are clearly tensions between what is in the clients interest in terms of winning litigation and what the client needs in terms of politics.

Mr. Bennett: Oh yes, and very often the public figures, at least based on my experience, they place the litigation second. Not always, but that is very common.

Mr. Birenbaum: Is it the client's call?

Mr. Bennett: It is the client's call. As long as it is legal and as long as it is ethical, it is the client's call.

Mr. Birenbaum: Is there anything else you want to add to what we have covered here, anything I have not asked you about that you want to discuss?

Mr. Bennett: No.

Mr. Birenbaum: Well, thank you very much. I certainly appreciate this.

Mr. Bennett: You are welcome. It is always nice to see you.

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Robert S. Bennett is a former federal prosecutor and a leading member of the defense bar. Mr. Bennett is renowned in his field as an exceptional trial lawyer who has handled numerous high-profile cases and has represented corporations and individuals, including corporate directors and officers, in criminal, civil, SEC enforcement, and congressional matters. Mr. Bennett has been listed repeatedly in various publications as one of the nation's most influential and successful litigators.

Mr. Bennett regularly represents large companies in high-profile criminal investigations and complex civil actions, such as Enron, HealthSouth, KPMG, and BNP Paribas. He also represents individuals in high-profile matters and has successfully represented two former Secretaries of Defense, Clark Clifford (Democrat) and Caspar Weinberger (Republican). He was President Clinton's personal lawyer in the Paula Jones case, and he represented New York Times reporter Judith Miller in the CIA leak investigation.

Mr. Bennett's robust background also includes representing clients before congressional committees. In 1981 and 1982, he served as a legal consultant to the United States Senate

Committee on Foreign Relations regarding the appointment of Alexander M. Haig, Jr. as Secretary of State, and he has served as special counsel to the United States Senate Committee on Ethics in several major investigations.

Mr. Bennett advises management, audit committees, and boards of directors on Sarbanes-Oxley matters, and he assists boards and audit committees in conducting internal investigations.

Mr. Bennett has co-chaired several American Bar Association National Institute programs on the defense of corporations and their officers in parallel grand jury and administrative agency investigations. He has written and lectured on complex criminal and civil matters, and crisis management issues. He also is a fellow in the American College of Trial Lawyers, an elite organization of the country's leading trial lawyers.

Representative Matters:

- Advised on creation and structuring of corporate privacy office and implementation of data governance structure for Fortune 25 healthcare business.
- Served as counsel for large publicly-traded business in negotiation and documentation of multibillion dollar healthcare joint venture.
- Advised publicly traded healthcare business on multipronged response to several large data incidents.
- Advised large healthcare provider on structuring and documenting innovative arrangement involving genetic data.
- Served as privacy outside counsel to Fortune 50 healthcare services provider on numerous mergers and acquisitions.
- Represented Enron in criminal investigation by the Justice Department's Enron Task Force.
- Represented KPMG in criminal investigation by the Justice Department.
- Represented President William Clinton in civil lawsuit brought by Paula Jones.
- Represented Secretary of Defense Caspar Weinberger in prosecution by independent counsel.
- Represented New York Times reporter Judith Miller in investigation of CIA leak.
- Represented HealthSouth in criminal investigation by the Justice Department.

Awards and Rankings:

- *Chambers USA, 2017* – Senior Statesman, Litigation: White-Collar Crime & Government Investigations (District of Columbia).
- *Chambers USA, 2010-2017* – Litigation: White Collar Crime & Government Investigations (District of Columbia).
- *Legal 500 US, 2011-2017* – Dispute Resolution: Corporate Investigations and White-Collar Criminal Defense.
- *National Law Journal:* 100 Most Influential Lawyers in America.
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Mr. Birenbaum is the author of numerous publications on the United Nations, international law, trade, including:

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- The UN and NATO: Twenty Years After, Cadernos Adenauer, no 2, 2009
- UN Reform, Progress, Prospects, and Priorities: Woodrow Wilson International Center for Scholars, Project on Leadership and Building State Capacity, October 2007

- Business Ventures in Eastern Europe and Russia: The Emerging Legal Framework for Foreign Investment, Prentice Hall Law & Business, 1992, a two-volume treatise
- “The Omnibus Trade Act of 1988: Trade Law Dialectics,” University of Pennsylvania/Journal of International Business Law, Fall 1989
- “Ventures in the China Trade,” Northwestern Journal of International Law & Business, Spring 1982
- “The Best Time?... Or the End of Time? It would Be Illusory To Say Its Future Is in Its Own Hands,” UN Chronicle, Nov. 4, 1999

Mr. Birenbaum lectured at the University of Pennsylvania Law School on international trade law, from 1987 to 1989, and in 1991, at Georgetown University Law Center, as an adjunct professor, on the laws of Eastern Europe and the Soviet Union and at ESADE School of Law in Barcelona, Spain, of principles of American federalism in 2013. He has spoken widely on a range of topics, including at ESADE in 2012 on The Responsibility to Protect.

Professional Associations

Among Mr. Birenbaum’s contributions to public service are the following:

- US Ambassador to the United Nations for U.N. Management and Reform
- Senior Scholar, Woodrow Wilson International Center for Scholars
- Public member, US Delegation to the U.N. Commission on Human Rights in Geneva
- Member of International Advisory Committee of the U.S. Institute of Peace
- Chairman of the Board and founder, Emergency Coalition for US Financial Support of the United Nations
- Member of the Board of Directors, Democracy Coalition Project
- Member of the Board of Directors, Conflict Management Group
- Member of the Board of Directors and Executive Committee, Brady Campaign to Prevent Gun Violence and Brady Center to Prevent Gun Violence
- Member of the Board and Executive Committee, Americans for Peace Now
- Member of the Board of Trustees, Freedom House
- Chair, American Bar Association Task Force on the United Nations Human Rights Commission
- Member, Council of International Law Section, ABA

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