

**ORAL HISTORY OF
BENJAMIN R. CIVILETTI - FOURTH INTERVIEW
NOVEMBER 13, 2001**

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is Benjamin Civiletti, former Attorney General of the United States, and the interviewer is Patricia Shakow. This interview, the fourth in a series, took place at the offices of the Venable law firm at 1201 New York Avenue, in the District of Columbia, at 10:00 a.m., on Tuesday, November 13, 2001.

Ms. Shakow: At the end of our last session, Ben, we were discussing legislation creating a large number of new federal judgeships. You said that the administration was interested primarily in improving diversity on the federal bench. Can you give us any rough figures indicating whether that goal was achieved; in other words, of the new judges —

Mr. Civiletti: I can just give you my rough recollection. The number of women on the bench probably quadrupled, but that's not saying much since it started from such a low number. But, I would guess that something like three out of every ten appointees of the Carter administration were women. Probably, two more of the ten were black, so I would say half of the judges, probably, that the Carter administration appointed were either women or black or both. A few Hispanics, particularly in the Southwest and the West, but not as substantial a number as other minorities.

Ms. Shakow: Did you have any controversial nominees? Did you have to fight for some of them? Were any of them defeated that you recall?

Mr. Civiletti: No, I don't recall any that were defeated and I don't recall any that we had to really fight extraordinarily hard to get confirmed. Of course, the Democrats controlled the Senate at the time, and so that made it somewhat easier. There were any number of potential candidates that were not nominated after the vetting for one reason or another.

Ms. Shakow: Vetting by the ABA, or vetting by the Department?

Mr. Civiletti: Most of the ones who were not nominated were vetted by the Department, and the reasons for their not being nominated were discovered during the Department's work. I don't recall any special difficulty. We had a couple of instances where the ABA initially had a requirement of so many years of practice and so many trials and, of course, black lawyers and women lawyers frequently didn't have those requirements. But we were able to convince the committee that that was inappropriate for people who either came to the bar later, as many women did, or who had not been in a litigative practice but had been professors or in a business practice, or something of that kind.

Ms. Shakow: I seem to remember, too, that the ABA had an informal rule that 40 was the minimum age for judges, and I believe that that was also changed —

Mr. Civiletti: That's correct. They did away with that silly rule.

Ms. Shakow: It doesn't look so silly as we get older, does it?

Mr. Civiletti: Well, there is some logic to it. My experience has been throughout the practice, not only in government, that a higher percentage of judges who go on the bench at an early age, from 34 say to 42, become disenchanted after ten or twelve years. Disenchanted, I think, because of the volume of nonsense cases in the federal court, disenchanted by the comparison in private salaries to judicial compensation —

Ms. Shakow: And, the pay freeze they had to endure for so long.

Mr. Civiletti: The pay freeze. And yet they stay on the bench and they become, I wouldn't say cynical, but they become difficult to deal with.

Ms. Shakow: That's a very interesting observation. I hadn't thought of that.

President Carter, of course, was not a lawyer, so this may not have loomed so large in his consciousness, but were you at the Justice Department and others in the administration very disappointed that he did not get to appoint any Supreme Court justices? Did you to expect —

Mr. Civiletti: Not really disappointed. We had a list that kind of was handed down. Attorney General Levi had a list on the Republican side that Judge Bell was very, very familiar with circuit court judges throughout the country, having served for thirteen years as one in the Fifth Circuit. He reviewed that list, developed his own list or the administration's list. I inherited it pretty much when I became Attorney General, and so we were kind of half prepared if the occasion arose, but no one was counting on it or disappointed that it didn't happen.

Ms. Shakow: Who was on that list? Can you tell us some names?

Mr. Civiletti: I don't remember exactly who was on the list, but I remember Attorney General Levi's list had Bill Webster on it, who became the head of the FBI, of course, and then the CIA. And he had a judge from the Ninth Circuit who was from either Utah or Arizona. He was a well thought of judge.

Ms. Shakow: Were there any women —

Mr. Civiletti: Once Ruth Bader Ginsburg got on the D.C. Circuit, she came onto my list.

Ms. Shakow: So, it's possible that President Carter might have appointed the first woman to the Court instead of President Reagan.

Mr. Civiletti: Amalya Kearse of the Second Circuit. She was on the list.

Ms. Shakow: She is also African-American, isn't she?

Mr. Civiletti: Yes.

Ms. Shakow: That's very interesting, a very interesting list. Are there any other issues or cases from that period, that is, before you became Attorney General, when you were Assistant AG and Deputy that you'd like to discuss before we move on?

Mr. Civiletti: I think we discussed Helms and Koreagate, Bert Lance.

Ms. Shakow: Graymail, we discussed.

Mr. Civiletti: Graymail, we discussed. Did we discuss Prairie Fire?

Ms. Shakow: No.

Mr. Civiletti: That was the circumstance where we had two FBI undercover agents in an organization called Prairie Fire — I think we did discuss that.

Ms. Shakow: I think we did, right, excuse me, we did.

Mr. Civiletti: Abscam began when I was Attorney General, I believe. Greylord began when I was Attorney General. The Weatherman prosecutions of the Deputy Director of the FBI began before I became Attorney General and continued after that, and I think we discussed them. I don't think there were any prior to my becoming Attorney General. One little incident when I became Attorney General was, and we may have discussed this, the Godunov, the Russian ballet dancer.

Ms. Shakow: The Russian ballet dancer, whose wife was in the plane.

Mr. Civiletti: Right, I guess Abscam and Greylord were two more sensational investigations while I was Attorney General. Greylord began just as I finished my term. Abscam was, of course, full blown and exploded while I was Attorney General as a result of leaks.

Ms. Shakow: Greylord was the corrupt judges in Chicago. I don't think we did

discuss that. Do you have anything you'd like to say about it?

Mr. Civiletti: I had a report from the U.S. Attorney in Chicago that there was evidence of corruption. So, he and the Bureau requested authority to conduct an undercover operation in Chicago of the state court trial system, of providing the opportunity for judges, lawyers and court personnel to receive payments for lesser sentences or for acquittals. And I authorized the investigation but required the condition that the Chief Judge of the state court system be advised, so that there was some recognition of the legitimacy of the federal investigation and it wasn't an attack on the system itself but on the corruption part of the system. That investigation went on two or three more years after I left office and resulted in probably half a dozen to a dozen judges being removed and the same number of lawyers being prosecuted successfully. It was quite a cleanup.

Ms. Shakow: Were the judges convicted and sent to prison?

Mr. Civiletti: Yes.

Ms. Shakow: Well, they should have been. In the summer of 1979 Griffin Bell decided to leave the Justice Department. Why did he do that? Do you know?

Mr. Civiletti: I think because he told the President when he took the position after having failed to satisfy the President in finding an Attorney General that the President had confidence in, that he would take the position but only for two years because, remember, he had just a year prior to the Carter administration retired from the Fifth Circuit in order to go into practice at King & Spalding with Charlie Kirbo, and his reasons for doing that still prevailed two years later in 1979 when he resigned. That was one reason. The second reason was that he was very canny, Judge Bell, and felt that a year of an election effort, which would be 1980, would be

a crazy season for all kinds of things to happen, and he would just as soon not be part of that.

The third reason was he thought he could get what he wanted to get done in the first two years of his service. So, he decided in 1977, that he was going to resign in January of '79, but what coincided roughly with that time was President Carter's Camp David retreat, where he discovered a malaise in the country and also would determine that certain Cabinet officers were not playing as team members. And he removed Patricia Harris and Califano and the fellow who was the head of the Treasury —

Ms. Shakow: Miller?

Mr. Civiletti: No.

Ms. Shakow: Blumenthal?

Mr. Civiletti: Blumenthal. So, Judge Bell didn't want to be associated with people who had been fired, so he waited several months until the coast was clear, so to speak, to resign.

Ms. Shakow: You have said that it was he who recommended your nomination to the President. Had you had much contact with President Carter or the White House staff before you became Attorney General?

Mr. Civiletti: No. A little bit of contact, but not much.

Ms. Shakow: So, he really was quite satisfied with Judge Bell's recommendation.

Mr. Civiletti: Well, there were two people who were being rumored to be Attorney General to replace Judge Bell; Warren Christopher, who was then the Under Secretary of State under Cy Vance and under Ed Muskie, when Muskie replaced Vance, and myself. And so, I think the President followed Judge Bell and Charlie Kirbo's recommendation and I think

that their feeling was that the Under Secretary of State was doing such a good job there that it was well to leave him there rather than have him switched to Justice and then have some lesser known person, and, of course, that proved to be a good choice because Warren played such a strong role in the release of the hostages in Iran.

Ms. Shakow: Once again, your nomination had token opposition in the Senate. One senator voted against you. Do you recall who that was and why he did so?

Mr. Civiletti: I don't recall who it was, but my guess is that it was the senator from Wyoming.

Ms. Shakow: Who had given you a hard time before.

Mr. Civiletti: Who had given me a hard time in my nomination for Deputy, Malcolm Wallop. Is that right?

Ms. Shakow: I think that is right, yes. I'm surprised that you don't have it engraved in your heart. I think I would remember someone who had done that to me.

Mr. Civiletti: I didn't think much of Wallop, so it didn't bother me that he voted against me. You're known by your enemies.

Ms. Shakow: That's right. I have read that a man named Jerry Berman, who was the lobbyist for the ACLU at that time, praised your nomination and said that the ACLU would much rather have you than Bell as Attorney General, and he was happy to see Bell leave. Why was that? Did Judge Bell run into problems with the ACLU?

Mr. Civiletti: I have no idea. I think Judge Bell believed — and I think it's been shown a little bit since he's left the government — I think Judge Bell believed that the ACLU was in left field and that they took extreme positions which were not good for the country, and

so he did not allow them the respect that they felt they were entitled to. And Judge Bell was, as was President Carter, fairly conservative and he has supported President Bush, the first, and now President Bush, the second. So, I'm not surprised that the ACLU may have felt so strongly about it.

Ms. Shakow: Was his confidence in you borne out? Did you have a good relationship with the ACLU? Or, do you recall any at all?

Mr. Civiletti: I don't recall any, but I did some things in civil rights in publishing a *Stanford Daily* guidelines dealing with free press and severe limitations on efforts to subpoena reporters or obtain sources from newspapers or things of that kind. And also, supported or promoted legislation which spelled out the rights of defendants and the use of graymail and information and where the discovery limits were, all of which I think probably were within the scope of the interests of the ACLU. They may not have agreed with all the positions, but they were within a range of reasonableness. And then we promulgated, which are still alive today, for the first time in the history of the Department, the Principles of Federal Prosecution, which spelled out for everyone, so everyone knew the rules of the game, plea bargaining, the focus of criminal prosecutions, the factors to be considered in priorities, the rights of defendants, the rights of people subpoenaed before the grand jury. For example, the subpoena of a potential defendant before the grand jury was determined to be a last resort. You had to exhaust all other means of evidence before you took to shooting fish in a barrel. So, those kinds of things probably —

Ms. Shakow: And, are you saying that before that time there was no uniformity across the country in each of the —

Mr. Civiletti: There was little uniformity. There was some uniformity, of course, as a result of Department of Justice policy, and to some extent, the advocacy training in the Department. But there was no express or published rationale for what the government was doing and should be doing in each of the stages of federal prosecution, investigation charging, for instance. One of the principles within this set of policies was that the fewest charges should be brought in order to cover the range of crimes committed by the alleged defendant and to secure an adequate sentence. And prior to that you'd have indictments of 400 counts in a case, which was ridiculous. And so I'm rather pleased that essentially, with minor modifications, those principles have survived through the Reagan years, the Bush years, the Clinton years, and to this day.

Ms. Shakow: That certainly explains Mr. Berman's confidence in you.

Mr. Civiletti: Maybe.

Ms. Shakow: Before we go into some of the cases and causes that you handled as Attorney General, I'd like to talk a little bit about being a member of the Cabinet. Do you recall your swearing-in ceremony, for example, where it was held and who administered the oath, and what members of your family were there? Was it a very big occasion in your life? Or, was it just a —

Mr. Civiletti: It was a very big occasion. Those are photographs of it. The Chief Justice swore me in. President Carter was there. Judge Bell, my wife, all of my relatives and family, friends, members of my law firm, members, of course, of the Department and other Cabinet officers, Chairman Rodino of the House Judiciary Committee, Senator Sarbanes, Senator Kennedy —

Ms. Shakow: And this was all done in the Justice Department?

Mr. Civiletti: And it was done in the Great Hall of the Justice Department, where those two statues are.

Ms. Shakow: Unclothed, as I remember Ed Meese having his picture taken with one of them. (Laughter) To what extent did this change your personal life? Did your family move at this point to Washington?

Mr. Civiletti: Yes. My wife and daughter — we got an apartment at the Irene, out in Bethesda, is it?

Ms. Shakow: Chevy Chase.

Mr. Civiletti: Chevy Chase, and we lived there for those two years. And my daughter was a freshman in high school, so she changed from Bryn Mawr School in Baltimore to a school out on — just before you get to the Beltway.

Ms. Shakow: Was it out River Road, the girl's school?

Mr. Civiletti: Yes. I've forgotten the name of it.

Ms. Shakow: It escapes me now. It's a very good school.

Mr. Civiletti: Not far from Burning Tree.

Ms. Shakow: Yes. I know just where it is.

Mr. Civiletti: That turned out to be a very good thing, because it was like a prep for when she went away to college. So, she switched schools, had to make all new friends, a new environment, test herself against missing the people she'd grown up with most of her life, and so she was there and then she returned to Bryn Mawr when I left the government and graduated from Bryn Mawr and then went to college the following year.

Ms. Shakow: She did graduate with her correct class back in Baltimore. That was nice.

Mr. Civiletti: But other than that, it didn't make a great change because I had been in the government for two years. We had tightened our budgetary belts and I never had any protection, FBI people or anything, either as Deputy or Assistant or as Attorney General.

Ms. Shakow: Even as Attorney General, you did not have any security people?

Mr. Civiletti: None.

Ms. Shakow: I'm amazed.

Mr. Civiletti: None, and never felt any need for any.

Ms. Shakow: Did you have a driver, for instance?

Mr. Civiletti: Never had any incidents. There were threats from time to time, but they usually came from prisoners who were in prison and couldn't do anything anyway. I had a driver, but I'd had a driver as Deputy and as Assistant Attorney General, so that wasn't new or different. I generally flew commercial airlines all the time and never had security with me when flying or traveling. The Bureau would meet me at an airport or railroad station sometimes when I was busy in another city and be available but we replaced Levi in the *Watergate* years and Mitchell, all of whom had had security. So, Judge Bell, along with other symbolisms of opening all the doors of the Department which had been secured before the Carter years, one of his symbols was that he had no security service and had not felt the need for it, and so I just followed in that path. I didn't feel any need for any, either. And, of course, security service is like live-in help, so to speak. You give up a lot of your privacy as a condition of that service.

Ms. Shakow: I couldn't imagine living that way, but I had assumed that you had

to at that point. What about your wife's obligation as a Cabinet wife? I should think that the burdens on her increased, especially in terms of social activities and other things. Did you feel obliged to go to functions that you just as soon would have skipped?

Mr. Civiletti: Modestly.

Ms. Shakow: Modestly, you went, or modestly, you felt —

Mr. Civiletti: Modest increase or imposition of social obligations. I think it was tempered by the fact that during most of the year 1980 the American hostages were held in Iran, and President Carter was following the Rose Garden strategy that he was not going — it turned out to be the wrong strategy — but he was not going to live it up while his fellow citizens were held captive in this foreign country. And so, that put a damper to some extent on social activities, although we did go to any number of them. The more burdensome were the requests for appearances and public speaking by every organization under the sun and balancing those occasions and making sure that you used some common sense in what was accepted and not accepted. But a major part of the Attorney General's role is as a leader and spokesperson for law enforcement throughout the country or on other issues, civil rights, the environment, or something else; so that a substantial amount of speechmaking is obligatory, and that was much more burdensome than as Deputy Attorney General, for example.

Ms. Shakow: Were you invited to the White House on many social occasions? Do you remember any state dinners, for instance?

Mr. Civiletti: I went to state dinners. From time to time the President would have the Cabinet, or half a dozen members of the Cabinet, sometimes all the Cabinet, sometimes fewer than all, and they would be more informal dinners than the state dinners, and would be

held in different areas of the White House. He did that about once a quarter or so, and they were very lovely dinners and very good times. I got to know Bill Miller quite well, and I got to know Ed Muskie quite well. I remember I didn't hit it off with Califano particularly well, but he wasn't there a great deal.

Ms. Shakow: Why was that?

Mr. Civiletti: I thought he shot from the hip a lot, and my first experience with HEW at the time was when he had made his speech saying that there were frauds, multimillions of dollars were being lost by the government as a result of health and welfare frauds throughout the country, as many as 50,000 frauds, and they should be investigated and prosecuted. Here I am, the Assistant Attorney General of the Criminal Division, and so we heard this speech, and the newspaper people, you know, just collapsed on me. So, I asked for a meeting with him, and he sent over his Undersecretary or Deputy, and I had my criminal fraud people there, and I said, "Well, who are these people? Where are the records? Have you referred them to the Department of Justice?" And went bang, bang, bang, bang. So, his answer to that was, "We don't know. We don't know. We don't know." And I said, "Well, you'd better go back to HEW and find these out and you'd better inform Secretary Califano that he'd better limit his remarks with regard to HEW fraud until he has the facts. Well, his people were appalled at that because they felt I was uncivil and lacked appreciation of the purpose of the meeting that they felt was a spiritual meeting so we could get together and discuss common problems and develop a plan for solving them. Instead, I had been combative.

Ms. Shakow: A lawyer.

Mr. Civiletti: Yea, a lawyer. So, that left an early, less than a wonderful taste in

my mouth about Joe Califano. Since then, of course, we've become friends, and I much admire him, but at the time I was not terribly happy with him. Neither was President Carter because he was off the reservation so much.

Ms. Shakow: Yes, yes. Did you make any lasting personal friends in the Cabinet, or even just for the time you were there? For instance, you mentioned, Muskie and Miller.

Mr. Civiletti: Cecil Andrus was —

Ms. Shakow: Interior.

Mr. Civiletti: Yea, the Secretary. He was a good friend.

Ms. Shakow: Was that because of your work in the Lands and Environmental area?

Mr. Civiletti: Yes, and because we hit it off. I never knew Blumenthal very well at all. And Patricia Harris, I did not know well. There was a man from Chicago, an older man, who I think was the head of — I can't remember now whether he went into —

Ms. Shakow: Klutznick?

Mr. Civiletti: Klutznick. Yes, Klutznick.

Ms. Shakow: Commerce Department.

Mr. Civiletti. Right. And, he and I got along very well.

Ms. Shakow: You didn't serve with Juanita Kreps, who was his predecessor there?

Mr. Civiletti: I did. I knew Juanita. I may have overlapped a little bit with her service, and she was a very charming lady and very competent. I didn't know her well, either.

Ms. Shakow: How about Brock Adams, or Neil Goldschmidt? He was fairly

young as you were.

Mr. Civiletti: Neil Goldschmidt was a good friend, and I enjoyed his company.

We were about the same age.

Ms. Shakow: That's what I was thinking. Yes, he was a very nice fellow.

Schlesinger, did you deal with Energy, or —

Mr. Civiletti: No, I didn't.

Ms. Shakow: Ray Marshall in the Labor Department?

Mr. Civiletti: Ray, I got along well with and became very fond of. McIntyre at OMB, I have and had a good relationship with him. Schlesinger, I thought was a windbag.

Ms. Shakow: Probably always a danger of that in the Cabinet.

Mr. Civiletti: He'd sit back and smoke his pipe and pontificate. I never enjoyed his arrogance.

Ms. Shakow: Now, Charles Duncan succeeded him. Was that the Charlie Duncan who had been U.S. Attorney there?

Mr. Civiletti: No.

Ms. Shakow: Okay.

Mr. Civiletti: Charlie Duncan was a very wealthy man. I think he was a Texan.

Ms. Shakow: I see.

Mr. Civiletti: From the Southwest and very competent.

Ms. Shakow: I didn't remember him at all. What were the Cabinet meetings like?

Mr. Civiletti: Perfunctory.

Ms. Shakow: Really.

Mr. Civiletti: You can imagine you have thirty people sitting around the Cabinet table, and then another twenty-five staff people sitting behind them. Each of the people at the table has very disparate interests. The Agriculture Department doesn't know anything about Justice. Justice knows little about Agriculture. State has its interests. Labor Department has its interests. Treasury, etc. So, at a meeting the commonality is far outweighed by disparate interests, and, by and large, the Cabinet meetings were an opportunity for the President to address policies or issues and to try to bring the Cabinet together to focus on what his priorities were and what was needed to be done, generally speaking, and then apply that general policy to your department. But there was very little discussion or question-and-answer period or ideas that were concrete. There were two exceptions: Califano and Harris; and they would always say, "We need to spend more money." To each of them the President said, "We can't spend any more money."

Ms. Shakow: So, real problems weren't solved there.

Mr. Civiletti: No.

Ms. Shakow: Did you find that you got the ear you needed in another forum if you didn't get to raise some question at the Cabinet meeting? You had no trouble dealing with the White House staff to the President?

Mr. Civiletti: No, I would periodically send a report to the President on issues that I thought should be called to his attention. Occasionally, I would call Hamilton Jordan. Occasionally, I would go to see Jody Powell. I think there was a man named David Rubenstein—

Ms. Shakow: I think I remember that name, too.

Mr. Civiletti: — a young man who was a Baltimorean. And I would call him and he was more a domestic policy and economic policy advisor. And for common problems, I would deal with the Cabinet member of that department, whether it was Ray Marshall, or Klutznick, or Muskie, or whomever.

Ms. Shakow: Did you feel that the President was a strong leader in terms of his own team, I mean, at these Cabinet meetings, or was he fairly content to let you —?

Mr. Civiletti: No, he was quite strong. He dominated the meetings, and he was very knowledgeable about detail, and he was not passive. He was active.

Ms. Shakow: I seem to recall that Mrs. Carter would occasionally sit in at meetings.

Mr. Civiletti: She was at every Cabinet meeting I was at.

Ms. Shakow: She was? And, what was the reaction? How did she — ?

Mr. Civiletti: She sat not far from the door. The Cabinet table is a very large oval table, and the President sits in the middle on one side, and the Vice President sits opposite him, which, in this instance, was Mondale. The Attorney General sits to the left of Mondale. The Secretary of State, Secretary of Defense sit to the left and right of the President, and the Secretary of the Treasury, I think, sits to the right of Mondale, or something like that. Those are the four. And then the other Cabinet officers at the time of creation sit and you get to the end of the table, the staff people sit behind the President and behind the Vice President, and their respective Cabinet officers that they've come with. At the very end of the table, at what would be the foot of the table, so to speak, near the door and away from the table, that's where Mrs.

Carter sat.

Ms. Shakow: Not actually at the table. More like a staffer would.

Mr. Civiletti: Except, she wasn't in a staff position. More like a sergeant-at-arms at the door, I mean it was adjacent to the door. She never said anything.

Ms. Shakow: She didn't participate.

Mr. Civiletti: Never.

Ms. Shakow: Did you have the feeling that she influenced the President later?

Mr. Civiletti: No. Not by the Cabinet meeting business. From the nature of their relationship, which was very, very close, and by the fact that she was a tireless campaigner and had her own issues such as mental health, I never had any doubt that she would speak her mind to the President or that the President would consult with her from time to time. But not anything that happened at Cabinet meetings would indicate that.

Ms. Shakow: Do you have any sense of what was the best part, aside from the substance of the job, the best part of being a member of the Cabinet, and what perhaps was the worst?

Mr. Civiletti: Well, I think the best part was being exposed to the conduct of the business of the federal government and to have the opportunity and to see the President develop policy and to see the caliber of the other men and women who were involved in one form of policy and the other; it was a very exhilarating type of exposure and experience to see the highest levels of government in operation themselves. There was no bad part, or poor part of Cabinet meetings. The toughest time I had as Attorney General was after the hostages had been held several months, White House staffers would call meetings to discuss various aspects of the

hostage crises, and as far as the Department of Justice those meetings focused on issues that related to the Department, too, which stood out. One was all the Iranian students in the United States. Most of them were on educational visas and many of them were not complying with the terms and conditions of the visas.

Ms. Shakow: That's the situation we have now with the Afghan students.

Mr. Civiletti: Similar.

Ms. Shakow: Interesting.

Mr. Civiletti: And, the second was that there were enormous numbers of Iranian demonstrations in support of the Ayatollah, which infuriated those who wanted to stop the demonstrations and, this is too harsh, and put all the Iranian students in jail.

Ms. Shakow: Yes.

Mr. Civiletti: And so I had to go to the White House twice a week and say you can't do that, it's not legal, it's not constitutional. You can limit where they demonstrate and you can get them out of the front of the White House and move them over to Constitution Avenue or somewhere, and we can investigate to see if Iranian students are violating their visas and the law and begin deportation proceedings, but we can't throw them in jail. So, it was a very difficult, —

Ms. Shakow: Trying time.

Mr. Civiletti: — trying time because I was kind of like the policeman who had to keep saying well, we can't do that, no, no.

Ms. Shakow: Well, I hate to sound parochial but I think when lawyers are in the White House or have strong staff positions in the White House, that kind of problem is addressed

with some sensitivity, but I gather that this didn't happen. If you were dealing with, for instance, Jordan or Powell, who were both young and —

Mr. Civiletti: No, I was dealing with some lawyers.

Ms. Shakow: And, even they —

Mr. Civiletti: And they were the ones that were pushing all kinds of creative ideas. I mean they knew that we couldn't close down all demonstrations and couldn't arrest all Iranian students. So those outliers they knew but they came up with a lot of cockamamie ideas that were short of that which were just as bad and just as, in my view, unconstitutional.

Ms. Shakow: Yes.

Mr. Civiletti: So, I don't excuse the proposals on the ground that the people who rendered them or made them were not lawyers or not trained and were politicians or whatever. And the White House counsel and I, at the time, didn't get along, particularly well.

Ms. Shakow: And, who was the White House counsel?

Mr. Civiletti: Lloyd Cutler.

Ms. Shakow: Oh, yes, a very strong-minded man. Moving on to some of the official activities of the Department, one of the major programs you had to administer during your time as Attorney General was the one created by the Law Enforcement Assistance Act, passed in the Johnson administration. Why was this program so controversial? Was it because a great deal of money was spent on hardware for police departments? And, some thought that it was wasted?

Mr. Civiletti: I never got into the LEAA controversy myself. By the time I became Attorney General, the handwriting was on the wall that the program would be knocked

down. President Carter, I guess, during his campaign had railed against the waste and silliness of LEAA, and Judge Bell picked up that theme as his own and believed it very strongly, so he wanted to eliminate the agency because he thought it was run poorly. He thought it wasn't doing what it should do, and he needed some symbols for that. So, the great symbol that he came upon was a grant that had been given to some police department or police academy to develop a shooting shoe, and the government had given \$50,000 for the development of this shooting shoe. So Judge Bell had a prototype of the shooting shoe sent in and he would wave it at every press conference and opportunity he had as to what LEAA was doing and why it should stop doing it.

Ms. Shakow: And there's nothing like a visual, like a shoe, to get you on television.

Mr. Civiletti: Then, he had a replica of an armored car, that a prototype had been developed, and it looked like a wartime tank. Instead of having one heavy artillery gun pointing out of it, it had about six of them coming out of each side, and it looked like it could have been used in the Battle of the Bulge instead of someplace in the metropolitan area.

Ms. Shakow: Rolling down Pennsylvania Avenue.

Mr. Civiletti: So, he succeeded in getting it reduced and reduced and I think it was eliminated by the end of the Carter administration.

Ms. Shakow: It was zero budgeted, as I recall, and then legislation was passed, I think, or it was extended. It was supposed to be.

Mr. Civiletti: — sunsetted.

Ms. Shakow: Yea, it just sunsetted a couple of years later. President Carter during these years decided to pardon the Puerto Rican terrorists, who had shot up the House of

Representatives sometime in the '50s and killed some Secret Service officers, as I recall, during the Truman administration. Did you take part in making that decision? Can you tell us about that?

Mr. Civiletti: I think we commuted their sentences — I don't think we pardoned them — to time served. They had become martyrs for activists in Puerto Rico that were challenging the Government of Puerto Rico, protesting or stirring up unrest and the feeling was the reason for their martyrdom was that these people had served thirty years — something like that — and were sick. A couple of them were unstable mentally and so they became a rallying cry for dissidents in Puerto Rico, anti-government activity, allegations that all military forces should be thrown out of Puerto Rico, etc., etc. And, so, I guess, I believe, I can't remember exactly who, but humanists, because of the condition of these people, sought their release and the Government of Puerto Rico, at least some elements of the Government of Puerto Rico, supported their release. And then our own State Department and Defense Department put in their positions which varied a little bit but concluded that release would be better than keeping them in prison. The Pardon Office was handling this and I had the Pardon Office do an extensive evaluation of each of the individuals and then had the State Department do a political evaluation as to whether they were likely to be leaders of revolutionary-type or terrorists, and all the reports of our investigation, and State Department's investigation, were that these people were too old, too sick or too feeble-minded or crazy-minded to be real leaders, and that their release would remove the martyrdom from them. They had already served thirty years and that it was the humane thing to do. So I recommended to President Carter and he was disposed in that way anyway, I believe, and so the sentences were commuted.

Ms. Shakow: In retrospect do you feel that was a good decision? It seems to have worked out.

Mr. Civiletti: It was a very good decision. No untoward acts, I think, ever occurred as a result of any of their releases. They were soon forgotten.

Ms. Shakow: They were. They sort of disappeared, didn't they?

Mr. Civiletti: Patty Hearst was the other commutation, which was, to some extent, controversial. We recommended that commutation because of the pretty much conclusive evidence that she was a victim of that peculiar mental condition where the hostage identifies with the hostage-taker.

Ms. Shakow: The Stockholm Syndrome, isn't it called?

Mr. Civiletti: Yes, the Stockholm Syndrome. But she had served for two-and-a-half or three years.

Ms. Shakow: And she was actually in prison when you made this pardon retrospectively —

Mr. Civiletti: It was a commutation, again.

Ms. Shakow: She was released.

Mr. Civiletti: She received a pardon, I think, under President Clinton.

Ms. Shakow: And, she seems to have settled down into a very respectable life, too.

Mr. Civiletti: Yes.

Ms. Shakow: In 1980 the Justice Department sponsored, and the Congress passed, legislation setting up new procedures short of impeachment for removing federal judges

from the bench. I believe the Act was later used in the case of Judge Alcee Hastings.

Mr. Civiletti: The Judicial Disabilities Act?

Ms. Shakow: Yes. Why was this legislation necessary?

Mr. Civiletti: Because judges are human like all the rest of us and they suffer frailties. They lose their physical abilities and they lose their mental abilities, and neither one of those factors are grounds for impeachment. So, we needed a method to deal with those frailties or other bizarre conduct or behavior that didn't amount to an impeachable offense, and we had half a dozen examples of judges around the country — after all, there are a thousand or more federal judges but only a few who were really incapacitated in one manner or another. And so the solution was this Judicial Disabilities Act, which provided for hearings and process and methodology to forcefully retire judges.

Ms. Shakow: I also seem to remember a problem involving the length of time it took to remove a judge by impeachment, which was considerable. And there was a case at the time I believe, a Nevada judge who was indicted and actually, I think, in jail, and who refused to resign.

Mr. Civiletti: True. That's exactly right. And there were other examples. I remember the Nevada judge, and he was one I was thinking of. And, then there was a judge in Northern California, also who had serious problems, a judge in Minnesota, who had serious problems, and impeachment processes were started and they took forever.

Ms. Shakow: And, I remember in the case of Judge Hastings, that he was charged with corruption and acquitted, but his colleagues on the bench, at least in the Fifth Circuit, believed that he was guilty and they were able to move him off the bench through the use of this

Act.

Mr. Civiletti: And put him where he belonged, in Congress.

Ms. Shakow: Right. Where I'm sure he's working on repeal of this Act. Now, let's talk about the Iran-Contra case. Excuse me, the hostage case, the Iranian hostage case. What was your role in seeking to free these hostages? Let's start from the beginning, actually. When were you notified that hostages had been taken?

Mr. Civiletti: Same day.

Ms. Shakow: The day it occurred.

Mr. Civiletti: The day it occurred.

Ms. Shakow: And, it was clear from the beginning that you would have to play a role in this.

Mr. Civiletti: It was, but the role that the Department of Justice played was, of course, a domestic role — in the aftermath, how to deal with adverse consequences in the United States, such as I mentioned earlier. Then, when negotiations started, the Department played a very large role in designing, in effect, the Iran Claims Court, and the seizure of Iranian assets throughout the country and the issuance of those orders and designing and developing and negotiating out. But largely the State Department did the negotiating of the terms and conditions of the Iranian Claims Court, which eventually became part and parcel of the release of the hostages and the settlement. The other role that we had was a technical role, and that is — I forget the Act now — but there is an Act that whenever there's a use of the United States forces on foreign soil, there has to be a notice to Congress —

Ms. Shakow: War Powers Act?

Mr. Civiletti: War Powers Act. And, of course, the Iranian hostage mission was top secret. And after the forces were under way, and the helicopters were under way for their mission, the Attorney General has responsibility of notifying the Congress under the War Powers Act.

Ms. Shakow: And, how did you do that? Quietly, or one by one or a message —

Mr. Civiletti: Through the respective chairmen of the committees in the House and Senate and at the very last minute after there would be no leak of the prospect of such a mission.

Ms. Shakow: Did you participate in any of the planning for that mission?

Mr. Civiletti: No.

Ms. Shakow: In retrospect do you have any thoughts about whether it should have been undertaken?

Mr. Civiletti: I'm not well enough versed to know whether it should have been undertaken or not, whether or not the equipment and the design of the rescue plan were sufficient. I do think that in a rescue mission of that nature, that, in my view, it has to be an all-or-none mission so that faced with the requirement of success, men can reach heroic levels of performance. This mission, as I understand it, had four or five checkpoints at which the mission could be aborted if it was not going well or there was a deficiency of some kind that had developed. Psychologically, it seemed to me, that created the possibility of failure from the very beginning and deprived it of the extremities that produce heroism.

Ms. Shakow: You went to the World Court, was it?

Mr. Civiletti: Yes.

Ms. Shakow: Tell me about that. And you personally represented the United States in this endeavor.

Mr. Civiletti: Yes. Almost all of the work in the World Court proceeding was done by the State Department. It was done by the Legal Advisor of the State Department, who was a man named Roberts Owen.

Ms. Shakow: It's not what you expected?

Mr. Civiletti: Roberts Owen. And, he and the State Department prepared all the papers. At the last minute, three or four days prior to maybe the arguments, I was directed to go to The Hague to make an opening statement on behalf of the government.

Ms. Shakow: May I step back a little. Was our government the moving party here, and, if so, what were we seeking?

Mr. Civiletti: Yes. We were seeking the declaration that the hostage-taking was illegal.

Ms. Shakow: I see.

Mr. Civiletti: And that the hostages be released, which in fact the court ordered. And we were not under any illusions that it would occur, but it was to rally world opinion against the Iranian hostage-takers and government, so as to be one more weight to achieve the release. So, I prepared the argument and reviewed it on the plane over, and then had an overnight rest and I made the initial statement and argument for about forty minutes or so to the World Court, not dealing very much with the technicalities of the argument or the positions taken in the brief, but rather general principles and the plight of these hostages. Then, when I finished, Roberts Owen made the bulk of the argument on behalf of the United States, probably

for two hours or so. It's a strange court because they don't, unlike the Supreme Court, for example, there's no give-and-take among the advocates and the court. There are, I think, as I recall, about thirteen to fifteen members of the Court of all different nationalities and languages, and so there are two glass rooms of interpreters and microphones worn by the judges. And what they do at the end of the presentations, and did at the end of mine, said that they would submit written questions to the advocates, and then you provide responses.

Ms. Shakow: Did they submit the questions, in fact, to you? Or, to Bob Owen?

Mr. Civiletti: Probably, yes. More to him. Probably, two to me.

Ms. Shakow: Were there any Americans on the Court at the time? There's usually one.

Mr. Civiletti: Yes, one.

Ms. Shakow: Do you recall who it was?

Mr. Civiletti: No.

Ms. Shakow: I can't recall, either. Did he recuse himself?

Mr. Civiletti: No.

Ms. Shakow: How soon did you have your decision?

Mr. Civiletti: Very quickly. Maybe within three weeks.

Ms. Shakow: That must have been very exciting.

Mr. Civiletti: Very exciting. First time. Of course, not many Attorneys General were trial lawyers and advocates. A few, Jackson is probably the most famous. So, for me it was not a strange environment. And I had argued the President's Wage-Price Guidelines case before the D.C. Circuit Court *en banc*, and I had argued the Fedorenko Nazi War Criminal case

before the Supreme Court, and I had, as I mentioned earlier, appeared at the disposition of the *Helms* case before the DC trial court. So I had been in court on behalf of the government in these different posts, never, of course, and no Attorney General's ever appeared in the World Court, so it was quite a momentous undertaking on short order.

Ms. Shakow: How did you feel when the hostages were released exactly the moment President Reagan was being inaugurated?

Mr. Civiletti: While I had two feelings. I had, of course, great exhilaration as a result of the release finally and relief that they were released unharmed. At the same time, I thought the timing was probably a petty act or least participating in a petty act by the new administration and the Iranian Government to deprive President Carter of —

Ms. Shakow: Right to the minute, as I recall. It was President Reagan who announced —

Mr. Civiletti: That's not an accident.

Ms. Shakow: No, no. Did the Cabinet have any formal or informal meeting with then-former President Carter, as he left?

Mr. Civiletti: I seem to recall we had a meeting on election night at a large hotel up on Wisconsin, and all the Cabinet officers were there, or it may have been the next night. In any event, the President gave a talk and then there was television coverage of the event of all the Cabinet officers, or most of the Cabinet officers. There was a dinner in January prior to the end of the administration at the White House with all the Cabinet officers. and the President said goodbye to everyone, and thanked them for their service. A very warm evening.

Ms. Shakow: In retrospect, what is your view of President Carter as a human

being as opposed to —

Mr. Civiletti: Oh, he's a great human being, a man of considerable humanitarian principles. I think his emphasis, if not introduction, certainly emphasis and focus on human rights being an integral part of our foreign policy is one of the greatest symbols of his humanity and his strength as a human being. He's very bright. My only hindsight assessment as to the nature of his personality not being viewed as enormously successful as a President, dealt with his being an engineer with an engineer's mind, in that each problem or issue that came before him he would analyze and try to perfect the solution in great detail. And if you have a hundred problems, and if you do that with each individual problem, looking at each part, you may say, well, that's of sound judgment and logical, and whatever. Looking at the whole, it may look less symmetrical because it's not consistent. It doesn't have a whole set of themes and principles that govern it throughout. And so his micromanagement, if it existed, I think detracted from his general abilities or at least from the impression of his policies.

Ms. Shakow: Certainly, his life since the presidency has been a model of good works.

Mr. Civiletti: I think he's been our greatest former President in terms of the use, for human good, of his high office. The only President that I'm familiar with in current times who has contributed in a similar fashion, although different, was Hoover.

Ms. Shakow: I was just going to ask if it would be Hoover.

Mr. Civiletti: The Hoover Commission and civil service reform and respect with which he was held by both parties.

Ms. Shakow: But President Carter's contribution isn't really as strong in the

private sector it seems to me. He not only does peacekeeping.

Mr. Civiletti: It's wider and broader both in domestic, world and the international sector, whether it's the elimination of disease or the enhancement of the food sources for underdeveloped countries or the securing and monitoring of free elections and the development of democracies in countries; or domestically, with homes for the poor or support for education, scholarships.

Ms. Shakow: Yes, even Mrs. Carter is quite active in many of those things, women and also in the mental health.

Mr. Civiletti: She's very active in Habitat for the Humanities and, of course, in mental health, and an advocate, I believe, for HIV assistance.

Ms. Shakow: Have you seen the President since he left office?

Mr. Civiletti: Yes.

Ms. Shakow: Do you have regular reunions or periodic reunions or was this a personal visit?

Mr. Civiletti: There are two opportunities for meeting with the President annually. One, is he comes to Washington several times a year, and on one or more of those occasions there is a reception and dinner for him to which the Cabinet officers are invited. And secondly, there is a similar annual affair at the Carter Center in Atlanta. Last — maybe two years ago, we had an Attorneys General quorum at the ABA meeting in Atlanta with eight, I think, former Attorneys General, including Kleindienst, who's no longer with us. At the end of that session President Carter came in and said hello to everybody and shook all hands and was very charming. I got to the Carter Center very early. If the program was at 9:00 o'clock, I was

there at 7:15, and lo and behold but who comes jogging down the Carter Center Road but Rosalyn and President Carter coming in from their run.

Ms. Shakow: That's very sweet. That's very nice. Did we miss anything in talking about this period during which you served as Attorney General?

Mr. Civiletti: I don't know. Did we talk about the Mariel Boatlift?

Ms. Shakow: No, we did not.

Mr. Civiletti: That was another crisis that was very difficult to handle, if not impossible, and that's when, as I recall, there were, I think, Cuban exiles in some South American country. I can't remember which country, Chile, or somewhere like that. And President Carter opened the American Embassy to allow these exiles to have sanctuary. And said some disparaging statements about Cuba and its human rights record and Castro's indifference to human rights. So, Castro's response was to say, "Fine, I'll let all the prisoners out and all the mental hospital occupants out." And he did and, of course, initially they were provided with some boats and means of transportation. Well, the Cuban relatives in the United States and Miami then sent thousands of boats to Mariel Harbor.

Ms. Shakow: It was like Dunkirk, wasn't it?

Mr. Civiletti: Right. And, in growing numbers over a period of three months. And then it became business where people would get a vessel and say, for a thousand a head, I'll go pick up your relatives. And two hundred thousand people of all stripes and kinds were flooding into Florida, and the President wanted to put a stop to that. Well, the Department of Justice does not have a Navy. It does not have an Air Force. So, stopping these boats was not easy. In fact, was not possible until Castro decided to turn off the spigot. But we did investigate

and prosecute traffickers. We did seize some six hundred vessels, but we had no place to put the vessels. We had no marinas or harbors, or anything else, so it became from the logistics, a very tough operation, and then the people who were here we had to try to house them or detain them because they were in the United States illegally and the military wanted to have nothing to do with us. And, finally, we got the President to order the military to take them into military barracks and facilities and camps and some are still in prison.

Ms. Shakow: I seem to recall that when the Department began to vet all these people, we found a number of felons, people who would not be eligible to come here under any circumstances, but that Castro at that point refused to take them back, so that's why we still have some —

Mr. Civiletti: Still have them in prison, some of them. I don't know how many have left. I think all told about 250,000 people came in —

Ms. Shakow: It was in enormous numbers.

Mr. Civiletti: The Mariel Boatlift.

Ms. Shakow: Yes. And I think the precedent that was very much in President Clinton's mind was when a similar crisis arose early in his administration.

Mr. Civiletti: Oh, sure.

Ms. Shakow: And complicated by the failure of this government to admit the Haitians from the same part of the world.

Mr. Civiletti: Correct.

Ms. Shakow: Yes. Very difficult time.

Mr. Civiletti: Other than that, I think we've covered almost everything.

Ms. Shakow: That's wonderful. Well, we have one more session in which we will discuss your life after the Justice Department, and thank you for your time today.

Mr. Civiletti: You're welcome.