

**ORAL HISTORY OF
BENJAMIN R. CIVILETTI - FIFTH INTERVIEW
DECEMBER 13, 2001**

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. It is the fifth interview of Benjamin R. Civiletti, former Attorney General of the United States. The interviewer is Patricia Shakow. The interview took place at the Venable law firm at 1201 New York Avenue, in the District of Columbia, on Thursday, December 13, 2001, at 11:00 a.m.

Ms. Shakow: Ben, we finished our last discussion as you were leaving the Justice Department in January 1981. What was the first thing you did after leaving office? Did you take a long vacation?

Mr. Civiletti: Yes. Gaile and I wanted to get away from — we wanted to do two things. One, we wanted to get away from the hubble bubble of public service and decompress so to speak, but also to stay away long enough in a rather remote area so that in returning to private practice I would not be disappointed by the fact that the phone only rang once a day, at best, originally, as opposed to 50 times a day. So we went on a trip to the Baja Peninsula and we spent eight weeks in Mexico. The Baja Peninsula did not quite work out because the hotel, one of the Princess Hotels was not quite — it was finished, but it had just opened and the golf course which supposedly was to open at the same time, had no grass on it. It had no greens. So it was a little difficult to imagine playing there. We stayed in the Baja Peninsula about two weeks and went all around, to Cabo San Lucas and the rest, and then we took the ferry overnight to the mainland and we found a place to stay there on the golf course, El Cid. It's not a very unique name, but, so we had some friends come down and see us and it was terrific.

Ms. Shakow: That's nice. And how long was that vacation? A couple of months?

Mr. Civiletti: A couple of months.

Ms. Shakow: You said that you were — at least your wife feared you'd be disappointed not to have the phone ringing all the time. Were you worried about that when you left?

Mr. Civiletti: No. I wasn't worried about the fact that it would be slow going to start a practice in Washington or to return to my practice after four years away and to return, particularly, with a Republican administration and having been a former Democratic Attorney General, I was not in high demand for lots of types of work. However, I didn't intend to be a lobbyist at all and did not do much lobbying, and still have not done it to this day so that my work returned to being advocacy work in the trial courts and the appellate courts. And I added some corporate governance knowledge and abilities from serving after a time on public corporate boards.

Ms. Shakow: I didn't mean to imply that you feared you wouldn't have enough work, but that psychologically you might feel left out. Most people do.

Mr. Civiletti: Oh, no question about it. I had anticipated being, if not depressed, then certainly frustrated between a — going from a 15-hour day of busyness as well as sometimes importance, to a day where you were thinking of ways in which to develop business or to communicate with old clients, or whatever, and I anticipated that it would be a frustrating experience and, indeed, it turned out to be even more frustrating than I had anticipated.

Ms. Shakow: I believe we touched on this earlier. But I wonder if you would tell me again how and why you decided to return to Venable instead of accepting other offers in both the law and business.

Mr. Civiletti: Well, the best way to describe it is that I knew Venable and I knew the quality of the lawyers, the character of the firm. And Baltimore had been our home for a very long time. And lastly, one of my mentors in my legal career was a man named H. Vernon Eney, who was the head of the firm when I came to the firm and had just stopped being the head of the firm in about 1979 or '80 and was ill. He was going in for an operation on his lungs which proved to be fatal, not known at the time that that was going to occur. But he and his wife had dinner with Gaile and me shortly before I made the decision. And he made a very appealing argument for my coming back to the firm. Since the firm had done so much for me, and this man had done so much personally for me, I decided that that was the best thing to do.

Ms. Shakow: That's very nice. And you've never regretted that obviously.

Mr. Civiletti: No. It's been wonderful.

Ms. Shakow: Good. I would like to look on your post-Justice career in two parts. First, the cases you have handled as part of the business of the firm. And second, the civic work you've done and the boards of both for-profit and nonprofit on which you have served. Let's talk first about traditional practice. In the 20 years in which you have been practicing since you left the government, what have been the most interesting cases that you've handled and which gave you the most personal satisfaction?

Mr. Civiletti: The ones I won gave me the most personal satisfaction. (Laughter)

Ms. Shakow: That's a perfect answer. (Laughter)

Mr. Civiletti: And solving problems. And, of course, I don't get cases that are lay downs. I get cases where the chances are about ten percent of winning. So they are a lot of fun because they are very difficult and people come when they are in a "bet the farm" situation.

Investigations have been fun, whether they have been derivative suit investigations or criminal investigations representing individuals or companies in the defense of those investigations and persuading the government either not to indict or to indict for tolerable charges and offenses, misdemeanors with heavy fines instead of a felony which would have far-reaching consequences, for example, for investment bankers and brokers and things of that kind.

Ms. Shakow: The sort of thing you did for the head of the CIA at one time.

Mr. Civiletti: Right. Exactly. Then I did individual plaintiff's cases. I've had two or three plaintiffs' cases of some size and significance and they are very creative and they were a lot of fun. Once suing the Blue Cross and Blue Shield on behalf of a small Cleveland hospital for antitrust violations, and once representing people who were injured in an airplane crash in New York when the plane, on the way to Cleveland, went over an embankment — a U.S. Air plane — it went into the water at LaGuardia. And that turned out very successfully. In a trial against General Motors, I represented the plaintiff's case, in which a Cadillac burned up with its owner in it. He happened to have passed out having drunk too much. But he was a horse breeder, a Canadian horse breeder, and so it was a great fun case because we got the jurisdiction in Kentucky when he was a Canadian resident, bought the car in Canada, the fire occurred in Canada, and we got jurisdiction in Kentucky, which is not easy. This year, for example, I represent the Republic of France in a major investigation involving Crédit Lyonnais and a French government entity called CDR. I represent a special litigation committee investigating derivative complaints against the Bank of New York. That's about finished. And it's been a lot of fun. I represent Massachusetts Mutual in a case in which they got unfairly socked for \$55 million in punitive damages because of a discharge of a career insurance agent,

and we got that — I handled the post-trial motions, got that reduced to \$7 million and now it's on appeal. We just filed a brief the other day. So, all of those cases and kinds of cases and variety of cases are very satisfying, very interesting.

Ms. Shakow: That's nice. The variety interests me because I see you have so many big corporate clients but there are so many aspects of representing them that —

Mr. Civiletti: Right. And it's fun working with younger lawyers, because on the bigger cases I may have anywhere from five to 15 lawyers doing the heavy lifting and it's fun to see those lawyers develop and exercise their judgment and imagination.

Ms. Shakow: And compete with each other I suppose.

Mr. Civiletti: Yes, to some extent.

Ms. Shakow: Good. The kind of work you've done for your largest business clients has been very interesting. As I look at your resumes and material the firm has prepared, I see they include Bethlehem Steel, Honeywell, MBNA, Goodyear, The Greater Baltimore Medical Center and Wackenhut. Did you have most of these clients before you joined the Carter administration? And what particular problem brought them to you, just generally, or can that not be said? Did I leave out any important clients other than the ones you just mentioned?

Mr. Civiletti: I don't know. It's hard to keep a little roster of them. If you do litigative work or trial work, unless the client has repetitive trial problems, it's a one-shot deal or a two-shot deal and then you go onto a new client. So it's not like a business lawyer who has IBM and he has IBM for 20 years.

Ms. Shakow: Or a specialist like a maritime lawyer.

Mr. Civiletti: To some extent, I have represented Bethlehem Steel before and

after the government since about 1965 probably, in a variety of different kinds of cases.

Employment cases, discrimination cases, asbestos cases.

Ms. Shakow: Did you ever do any trade work?

Mr. Civiletti: No.

Ms. Shakow: I came across an asbestos case which had been filed by some employees in the summer of 1981 just as, perhaps, you were rejoining the firm and I seem to remember that you won that case on some kind of jurisdictional grounds, but it must have been a long slog, any of these asbestos cases.

Mr. Civiletti: I think we won that particular case on the jurisdictional ground that the employees only had workman's compensation claims and not direct claims against the company.

Ms. Shakow: I believe they had claimed conspiracy, or something, which created a new cause of action.

Mr. Civiletti: MBNA I gained after I left the government as a result of being on the board of Maryland National Bank which then spun off MBNA, the credit card subsidiary that it had, and I came to represent the bank and the credit card company as a result of the relationship with Al Lerner, who is the major owner of MBNA and who owns the Cleveland Browns.

Ms. Shakow: You get to go to the games, too?

Mr. Civiletti: I don't go to many Cleveland Browns games. I go to Ravens games, the Baltimore Ravens.

Ms. Shakow: I remember. I think I've heard of them. When you represented the

Medical Center, did you handle malpractice cases of various kinds, or did you do lobbying?

Mr. Civiletti: No. Neither one of those. I did a major case where the State Health Board had allowed another hospital to build a new hospital in the northern territory of GBMC, and so it became — they were terribly upset about it and took an appeal to the Circuit Court. And I handled that trial in the Circuit Court. I got the judge to reverse the State Health Commission that had granted the certificate of need, and prevented the hospital, which was Maryland General, from, in effect, cutting off the entire northern market from GBMC. So they were very happy about that and grateful and, as a result, we continued to, and I became the lead lawyer for them, and continued to do all of their business except malpractice, which was done by an insurance law firm.

Ms. Shakow: Let's talk a little about the savings and loan scandals of the mid-1980s, which was not a happy time for your firm, among other people. The firm was sued, was it not, for malpractice and conflict of interest in some of these cases and wound up paying the State of Maryland \$27 million which, at the time, was the largest legal malpractice settlement ever in Maryland? Who brought that case and what was it all about?

Mr. Civiletti: The State brought the case on behalf of the bailout that had occurred when these various savings and loans went bellyup. The State had to, through its state insurance program, make them reasonably whole, the depositors reasonably whole, up to the amount individually of the insurance applicable to each depositor. They were not generally federal savings and loans, they were state savings and loans. So they brought suit against any number of defendants — boards of directors of the savings and loans, executives of the savings and loans, counsel for the savings and loans, accounting firms who represented some of the

savings and loans. Venable got involved or caught up in the scandal because we represented Old Court Savings and Loan in real estate transactions and gave them tax advice, gave them real estate advice, all of which advice was sound. But one of our other lawyers gave advice to a state agency which was the state insurance body and the young lawyer who had done that was advised by our ethics people to get a waiver from both sides. And so we got a waiver — we had the waiver from the Old Court Savings and Loan, it was in the file, a written waiver. The young lawyer said he got an oral waiver from the state agency but we had no record. And so we got sued for that conflict of interest, and some of the real estate transactions proved out to be such that the property was not as valuable as it appeared to be at the time. There was no proof that we had knowledge that it was inflated prices for higher loan values and some of the executives of the savings and loan had interests, hidden interests, in the real estate. In any event, we got sued. A number of people left the firm.

Ms. Shakow: Including that poor young lawyer who didn't get the waiver, I'm sure.

Mr. Civiletti: He left. And what it — it froze the managing partner at the time. It was Jacques Schlenger. He went into a bunker mentality, unfortunately. And so within three or four months of the scandal, I, in effect, told him that I would have to take over the firm and become the managing partner. This was in the beginning of 1987 or the end of 1986. So I did. I moved from the Washington office back to Baltimore, became the managing partner. Settled the case in June of 1987, I think. The firm went from about 220 lawyers down to about 140 during that time, during that year or so that we were in the scandal. I did an enormous number of interviews in the papers, the thrust of which was that we should have done better. That I was

disappointed that we were associated with the scandal and that I put into operation a tripartite review process, that was not only a review on ethics, but it was a review by an acceptance quality board of several people. And then the managing partner had to approve all new files and new clients. And so it was kind of a triple check system to prevent any kind of reoccurrence of that. We were treated very fairly by the press and media and the clients stayed with us, and so we've rebuilt the firm from that blow that it took, quite well. I'm particularly proud of this Washington, D.C. office, of course.

Ms. Shakow: The press, I think, was very understanding in saying that even though this award was high, it was considered fair and then a lot better than what the State had asked for.

Mr. Civiletti: Yes. The State had asked for \$50 million. Our insurance coverage was \$30 million and the State wanted a pound of flesh from each of the partners. We argued that that was unfair to do that and the carriers came up with the ability and the willingness to settle for the \$27 million, which was, they saved \$3 million out of their policy and we avoided any of the individual partners being obligated. But a consequence of that, the tax lawyer who worked on the Old Court matters was a close colleague of mine, a close friend, and he was one that had to go.

Mr. Shakow: That must have been very hard.

Mr. Civiletti: That was very hard. He went and of course the young partner went who didn't get the waiver.

Ms. Shakow: Mr. Schlenger, did he leave?

Mr. Civiletti: Mr. Schlenger?

Ms. Shakow: Yes.

Mr. Civiletti: No. He kind of took a back seat from then on. There was a third partner, but he didn't leave. Two of them had to leave. Those three were charged by the state ethics board with ethics violations, and they went to trial before the court and were all found innocent.

Ms. Shakow: And, have they survived in terms of the legal careers they had?

Mr. Civiletti: Yes. The tax lawyer has a good practice with a smaller firm, the real estate young lawyer who neglected the waiver got a very good position with Alex Brown, and the third man has continued a good practice with the firm.

Ms. Shakow: Now, you've said that the firm went from, I think it was, 240 to 120. Who would we —

Mr. Civiletti: From about 220 or 240 to 150.

Ms. Shakow: Who were the others? Were they associates that had been —

Mr. Civiletti: Partners and associates.

Ms. Shakow: I see.

Mr. Civiletti: They got frightened about the future and they were good lawyers, and they jumped.

Ms. Shakow: So, they weren't forced out. They left.

Mr. Civiletti: No, they weren't forced out.

Ms. Shakow: I see. I see. Well, that must be a very painful experience. Were all the depositors made whole after all this litigation and investigation, or were they, I suppose, made whole up to \$100,000 a person?

Mr. Civiletti: I think that they were not all made whole. I think that there were, of course, about in this scandal, there were about 15 or 18 savings and loans that went bellyup, and Old Court, that was our tar baby was one of the bigger ones. But my recollection is that as a result of a combination of the receiverships and the litigations that the depositors of Old Court got over time about \$.75 on the dollar.

Ms. Shakow: Not bad. Another semi-scandal involving the firm, but only tangentially, occurred in the eighties, and I wonder if you remember it. An attorney named Gary Notestein —

Mr. Civiletti: Yes.

Ms. Shakow: — was found to have embezzled tens of thousands of dollars from the firm, and he later went on to falsify his credentials and worked for a number of other firms, and then he was murdered.

Mr. Civiletti: And he was murdered.

Ms. Shakow: Yes. Do you remember that case? Was his killer ever found?

Mr. Civiletti: I think he was, and I think it had to do with some kind of perversity. I think he was knifed to death in an alley.

Ms. Shakow: He was. At night. At 2:00 in the morning or something.

Mr. Civiletti: And Notestein was a terribly tragic case because he was a rising star, and he had been head of the associates committee. The first year he became partner and he wrote a book on OSHA, had it published, and it was a leading authority on the OSHA law. And so he had a wonderful career ahead of him. He was very bright. He was very articulate. He was charming. And, by accident almost, or carelessness, or psychological desire to be caught, or

whatever, our accountant found — at that time any partner could sign a check, and you didn't have to have a countersignature or the head of the firm sign it, or the business manager of the firm, or anything — so, his scheme — he had several schemes — but one of them was that he would take a trip to New York and he'd charge it for reimbursement from the firm.

Ms. Shakow: Yes.

Mr. Civiletti: And, then he would on the same day charge reimbursement to two other places, which was stupid.

Ms. Shakow: Yes.

Mr. Civiletti: But, he would submit this claim the day before, or the day after, it might not have been exactly the same day. And then he'd get the reimbursement check and he'd sign the check and after a while it got, as those things do, bigger and bigger and he was submitting reimbursements every two weeks for a trip to California, a trip here and there and somewhere else. And, the other thing he was doing was he began to make up a file for a client that didn't exist and charge to that file reimbursements for trips that he never took and events that never occurred for fictitious client and fictitious work. And then for existing clients he billed some of them for work that he never did. So, we had to reimburse the client for the billing that he did. We discovered this, and so Mr. Schlenger called me in and said, "Take a look at it, Ben, see what you think." I took a quick look at it, and I said, "We have to discharge him right now and report him to the disciplinary people," which we did. And, then he was — I think he was prosecuted by the State's Attorney's Office, and I think he was disbarred —

Ms. Shakow: I think he was. Yes.

Mr. Civiletti: — in Maryland. But, then he falsified his records and papers and

changed his name slightly —

Ms. Shakow: Exactly.

Mr. Civiletti: — and began teaching in the West first, I think in Colorado or somewhere, and then he went to New York and taught law in New York for a while. His excuse for having done this was that he was dating some, or going with some stripper, and she was threatening that she would tell his wife, and so he was being blackmailed and he needed the money to —

Ms. Shakow: Well, that certainly explains it. (Laughter) Obviously, he was a very creative criminal.

Mr. Civiletti: Stupid.

Ms. Shakow: Moving on to your public life as opposed to the firm, you continued to be involved in both national and state matters almost from the beginning. I found, for instance, in September 1981 that you had a letter published in the *Washington Post* critical of the Reagan administration for revoking the so-called Snep guidelines that you had put into place about government employees publishing material. Do you recall that situation, and do you know if the revocation of these guidelines led to prosecution that you would not have brought?

Mr. Civiletti: I don't know about the latter, but I do recall the former. And, we had worked very hard on those guidelines, and they were highly desirable because early on in the Carter administration there were some, I think there was a man named Agee who was a former CIA agent —

Ms. Shakow: Yes.

Mr. Civiletti: — and published papers and there was a big dispute with him

and —

Ms. Shakow: He had signed a nondisclosure agreement, however, which he then abrogated.

Mr. Civiletti: And, so we had worked very hard to publish these and they were, I thought, highly desirable and they were a way, a reasoned way, through the morass of a person who writes on the one hand and national security on the other. So, I was eager to join the letter, or write the letter, and I thought it was a mistake to revoke the guidelines. Part of the reason for the letter was to try and persuade William French Smith's department, even if they revoked the guidelines, to utilize them.

Ms. Shakow: Yes. Informally. Yes. Perhaps they did, because I can't recall too many prosecutions.

Mr. Civiletti: I don't recall either.

Ms. Shakow: And I do recall that one of the matters dealt with in the guidelines was the vulnerability of newspapers who published accounts of these books.

Mr. Civiletti: Right.

Ms. Shakow: And if the guidelines were revoked, they were presumably at risk, but I don't recall any newspaper being sued. That would really be a mess.

In 1990 you were closely involved in a kind of series of disputes between the Governor of Virginia, Doug Wilder, and the Attorney General of that State, Mary Sue Terry, over a couple of matters. One was the integration by women of the Virginia Military Institute and later there was a dispute over Ms. Terry's representation of the Virginia Retirement System. You represented Governor Wilder in both situations. Can you tell us anything about these cases?

Mr. Civiletti: I won them both. (Laughter)

Ms. Shakow: So, there was great personal satisfaction. They were two very interesting political characters. It must have been fascinating to see them scrap with each other up close.

Mr. Civiletti: Right. Well, I surprisingly — my involvement was purely legal, that is, since I wasn't a Virginia lawyer, wasn't in Virginia politics, had no interest in it. I didn't pay much attention to the shenanigans of the Attorney General or the Governor at the time. I was focused purely on whatever the legal issues were in those respective cases.

Ms. Shakow: How did you come to represent the governor of the state where you had no connections?

Mr. Civiletti: I don't know. Wilder called me and asked me.

Ms. Shakow: You'd met him before. You knew him.

Mr. Civiletti: Vaguely, maybe once, casually.

Ms. Shakow: Well, that's very nice to get that kind of call.

Mr. Civiletti: Right. But you get those calls from time to time from people that you never heard of.

Ms. Shakow: It seems that she was jockeying for position to run for governor at some point and there was some talk that he was determined to discredit her. Did you get any sense of the political aspects of this?

Mr. Civiletti: No.

Ms. Shakow: No, you just —

Mr. Civiletti: I got the sense of the political aspects of the VMI case, you

know —

Ms. Shakow: Of which there were many, right?

Mr. Civiletti: — which there were many. There were people all over the spectrum there. And Wilder was trying to balance politically in that case without destroying the Democratic Party for decades —

Ms. Shakow: Yes.

Mr. Civiletti: — in Virginia. But he finally took the right position and the right course. There was no — although it took a long time for that decision to occur —

Ms. Shakow: And a lot of litigation before it was implemented.

Mr. Civiletti: There was no justification for the state —

Ms. Shakow: Well, it really was a state-supported school, too, wasn't it?

Mr. Civiletti: I couldn't believe how adamant and passionate some of those VMI graduates were who were lawyers.

Ms. Shakow: Oh, I see. I thought it was just the military types who were so upset. Well, it was a rocky time for them. Do you know whatever happened to Mary Sue Terry, who was really a rising star in the party and who kind of collapsed?

Mr. Civiletti: I don't know.

Ms. Shakow: I don't either.

Mr. Civiletti: I don't know that I ever met her.

Ms. Shakow: Oh, I see. I see. Well, of course she and the Governor both came separately before to see us at the *Post* when I was there writing editorials and he was a real charmer, he really was. And then she seemed bright, too. We all thought she was going places.

You serve on five or six corporate boards, mostly on behalf of clients and corporations. What is this work like? Do you enjoy it? Is it time-consuming, tedious or interesting?

Mr. Civiletti: It is very interesting and it's reasonably time-consuming. It's a little better than might appear on the face of it because two of the boards are Wackenhut, the parent and the subsidiary. And two of the other boards are MBNA, MBNA America and MBNA Europe, so they are a parent and a subsidiary. And then the fifth board is a corporate board, Bethlehem Steel, so that it takes some time but not an overriding amount of time. The interesting part is to see or to learn how corporate boards make decisions, how they operate, how they exercise their consensus, and it is done in different ways. Whether interesting to see in times of trouble — and I've been on boards where they have been in troubles like Maryland National Bank board and now the Bethlehem board — it is interesting to see how many people stand up or don't stand up, want to just get along and go along or get out or do whatever. Interesting to see in action, instead of just theory, the differences between the power of the CEO and the executive and operational matters, and the power of the board for policy and direction matters, and how they interrelate. And sometimes there's an overstepping on one side or an overstepping on the other side and how that corrects itself. The dynamics in corporate matters are interesting.

Ms. Shakow: And in some corporations you're saying that there really is a balance. I have assumed generally since the management more or less appoints the board or chooses people to go on the board that they were less likely to rebel. But what you are saying is that they do when you have a good arrangement and a strong board.

Mr. Civiletti: Right. And the management, generally speaking the best management, wants the board to tell it when it disagrees with it or when it's wrong or to challenge the management on the direction it wants to take. Not every day, not every issue, but where it's important or where it counts, rather than rubber-stamp. You might as well not have a board if you just have rubber stamps.

Ms. Shakow: But there are many businesses that operate that way.

Mr. Civiletti: Well, people are like that.

Ms. Shakow: Yes. And CEOs get an idea about their own power.

Mr. Civiletti: Even with people who are successful — if you get 100 people in a room and give them very tough issues, you only come out with 10 people who are going to stand up and say I believe this and it's important and right. So that even with your best of intentions, I think my experience is that half the board is kind of laissez-faire. Now that's not true of boards in difficult times. When things are going well, the boards are attentive, but they are not obstreperous when things are going very well. And MBNA, for example, is a hugely successful company and does the right thing in almost every way so that those board sessions and meetings and all are all very positive. And everybody participates but there is not much tension. Occasionally there is a little tension. On the other hand, the Wackenhut boards, which are dominated you would think by the Wackenhut father and son, are very forceful and challenging to management, but of course they've got an army and a marine general on the board, a former commandant, P.X. Kelly, Tom Stafford, a former astronaut, myself, Jack Ruffell who's the former vice chairman of the board of Morgan, J.P. Morgan. So, I mean it's a really fairly strong, high-quality board.

Ms. Shakow: And it says something about the corporation in that they chose to have people like that on the board.

Mr. Civiletti: Right. And you'll read either today or tomorrow, Bethlehem Steel which is in Chapter 11, but the board brought in Steve Miller who's a turnaround expert and a very competent guy, to become the CEO and replace Duane Dunham who was the former CEO, moved him down to president and now I think yesterday afternoon, Miller has replaced four of the top executives, eliminated their positions and they're retired as of January 31st.

Ms. Shakow: Is there hope for the steel industry in the country?

Mr. Civiletti: Slim.

Ms. Shakow: It's very sad, isn't it?

Mr. Civiletti: Yes.

Ms. Shakow: I supposed we'll find other industries for them to work in as we move ahead.

Mr. Civiletti: Yes.

Ms. Shakow: You've also served on a pro bono basis on a number of nonprofit boards and governors' task forces in areas including the funding of public education where your suggested reforms were adopted by the state legislature and the funding of arts programs in the state and panels on drug abuse and welfare reform. How about that kind of work? Is that very satisfying? Time-consuming?

Mr. Civiletti: It's a mixed bag.

Ms. Shakow: Are the boards as good?

Mr. Civiletti: The boards are as good. They are usually larger and more difficult

to focus and the problems which are put on the table before the boards are not soluble problems as they would be in closing a plant or opening a plant, or whatever. They are kind of age-old problems, but you can make improvements or try to make improvements but you can't — it's unlikely to correct an entire —

Ms. Shakow: Right. It's more on the policy decisions, too, I suppose.

Mr. Civiletti: It's a mixed bag, too, about the interest. I'm flattered sometimes into saying yes without examining more closely whether I'm really concerned or interested in this issue. And so then I get involved in it and the satisfaction varies depending on the subject matter. For example, the Education Commission was very interesting, very exciting. You could make tangible progress. Worthwhile. Welfare reform the same way. It was terrific. The board dealing with prison reform and jail reform was not so satisfying. It was too diffuse and —

Ms. Shakow: And everything you wanted to do, I assume, costs an enormous amount of money.

Mr. Civiletti: That's right.

Ms. Shakow: How about the arts? Did you enjoy that?

Mr. Civiletti: Yes. That was fun. That was fun and very worthwhile. Some of the ideas were quite creative. It wasn't simply giving money but it was demonstrating utilization by inner-city children of the arts and the contribution the arts made to the well-being of inner-city children. And then the multiplication effect of every dollar given or provided to the arts and how that was multiplied in terms of tourists or participations or travel or whatever.

Ms. Shakow: I have myself been on minor task forces that start off with a great push and have — half the problem that lawyers on the East Coast named to the task force, myself

included of course. And they fizzle because these people who are governors and famous politicians really don't — they don't show up, they don't do any work and the whole thing is staff driven, really. Do you find that happens occasionally?

Mr. Civiletti: Yes. I'm sorry to confess that it has happened to me, but I've been on a couple of commissions or boards in which I have had very little participation and after a while withdrew because I was embarrassed by the fact that I wasn't contributing and didn't have the interest and didn't want to have simply a name association.

Ms. Shakow: Especially when you were unwilling to devote the time to examine everything that was going to be published in your name.

Mr. Civiletti: Right. I was on an interesting commission with the National Research Council on Cryptology.

Ms. Shakow: I saw that. Tell me about it.

Mr. Civiletti: Well, that was a wonderful experience. And a fellow named, who is now Undersecretary of State — Dam — anyway, he was the chair of it. It had to do with restrictions on the export of advanced cryptology mechanisms in computers and how in an ironic way that was — a lot of the evidence was that it would severely handicap United States industry and businesses and developments and give advantages to the Japanese or to the Europeans because they could use analogs and other encryptions that were far stronger than ours. And so it was an isolationist type of view. But there were arguments, too, about national security and some of these methodologies which were prohibited, if utilized, would destroy NSA and its ability to break codes and interpret communications. It was a very — we went there and visited NSA and heard their pitches and had CIA representatives come. And we all had to be cleared for

national security purposes for access to intelligence —

Ms. Shakow: I think that matter is still around, isn't it?

Mr. Civiletti: Oh sure. And it will continue to be around.

Ms. Shakow: And it really focuses on the Justice Department, as I recall, so you were a good fit for that.

Mr. Civiletti: State and Justice, those two really. But Clinton relaxed the export rules on cryptology. The State Department has the policing role.

Ms. Shakow: Well, it's a fascinating subject. You and I have talked briefly about your position in relation to the Teamsters, but I'm not clear on what that is.

Mr. Civiletti: Well the Teamsters agreed to a consent decree back in 1988 so that — and over time in that consent decree there was an appointment of an independent review board of three persons. One nominated by the Teamsters, one by the Attorney General and then one picked by those two nominees.

Ms. Shakow: To oversee the entire work of the union?

Mr. Civiletti: No, the independent review board was essentially to oversee association with criminals, bringing disrepute on the union or corruption. A mechanism was, essentially, a body that could investigate and then could give its investigative report to the head of the union, Hoffa in this instance, recommending that he proceed with it. He then has the right to proceed, and if he does then his result comes back to the independent review board and they say it's adequate or inadequate or they can seize the jurisdiction and say well we're going to do it. Or Hoffa can kick it back and say I don't want to do it, you do it. And then it's tried by — there's a hearing and it's tried by the independent review board. Last year, I guess, the Attorney

General decided to change the government representative and nominated me instead of Judge Lacey who had served for more than 10 years — and the union decided to change and get Joe DiGenova and so we picked Webster who had been on the board for some continuity.

Ms. Shakow: That's a congenial trio.

Mr. Civiletti: And it's interesting, not only because of the work, but it's interesting because the Teamsters now are saying enough is enough and it's time to get rid of this independent review board. And they've been joined by the AFL-CIO — who's the head of it now, Murphy?

Ms. Shakow: There's a fellow named Hiatt who's the General Counsel of the AFL-CIO.

Mr. Civiletti: Murray or Murphy or something like that — he came out with his 13 million members and said enough is enough. And so President Bush who has been wooing the union folks to some extent has made a couple of little noises about well we're going to take a hard look at this.

Ms. Shakow: The consent decree did not have a termination date of this arrangement?

Mr. Civiletti: No. It had some for elections and election supervision and they are passed and I think the last operative parts of the consent decree are this independent review process. And we've had two or three hearings since I've been appointed.

Ms. Shakow: And all it would take to free them from this consent decree is the government's agreement?

Mr. Civiletti: No.

Ms. Shakow: Court?

Mr. Civiletti: It would have to go before the court and they'd have to bring justification and a record made that it's no longer necessary or desirable. And it can be done, in effect, by the union itself, or by sporadic investigations by the U.S. outside of the regular process.

Ms. Shakow: That sounds fascinating.

Mr. Civiletti: It is fascinating. It is interesting to learn about how the union operates.

Ms. Shakow: Yes. And how cleverly they play both parties.

Mr. Civiletti: For example, I did not realize that some union officials make \$300,000 a year and the reason they make it — one of the reasons is that they hold five different jobs.

Ms. Shakow: Sure. They're the head of the pension funds —

Mr. Civiletti: Right. And they get paid for each job.

Ms. Shakow: That's what got them into trouble. They used to steal from each fund, too. But now that you're supervising, I'm sure that doesn't go on at all.

Mr. Civiletti: I hope not.

Ms. Shakow: Moving to perhaps some less interesting work, but I see you have been a leader of the legal community, both in the state and nationally, you've done a lot of work on the ABA and you were a founder of the state's Legal Services Corporation. Anything to be said about that work? Especially Legal Services?

Mr. Civiletti: A lot of it, or most of it, is ending.

Ms. Shakow: Really? Because of funds?

Mr. Civiletti: I retired from the — Setting up the Legal Services Corporation, it was fun and to get all the banks to throw in the IOLTA money was interesting and worthwhile. And setting up the grant programs and the review of all the initiation was fun. And then more recently, I've been on the Legal Aid board, the actual rendering of the services, for about five years. And I just retired from that. This is my last year on the Section Council of the Litigation Section of the ABA. I've told them I'm not running again for membership in the House of Delegates. I've been in for 12 or 15 years, or something. So, that's why I say I'm ending the direct role in the Litigation Section and the House of the ABA and in the Legal Aid Bureau. What I'm keeping is my title as and office as the American Bar's Representative to the UN.

Ms. Shakow: Tell me about that. How long have you done that and are you the only one?

Mr. Civiletti: I'm the only representative. I have an alternate representative under me in the event that I don't participate in some event. And I replaced Edmund Muskie who was the ABA representative before me. So I've been probably four years, something like that. There's an ABA Day at the UN each year in the spring which the representative hosts, so to speak. Fifty officers of the ABA of one kind or another come and meet with various representatives of the UN and the General Counsel's office for a full day and a half in New York and they have a meeting there. And there are non-governmental organizations is what we are — NGOs is what the ABA is and they have various meetings on various topics so we're invited to go to those and sometimes I go —

Ms. Shakow: To testify sometimes?

Mr. Civiletti: Sometimes. And usually though, I refer those matters and request assistance from the International Law Section of the ABA that has the expertise in the various pockets of interest.

Ms. Shakow: Well that sounds real interesting.

Mr. Civiletti: It is. I hope to do more of that.

Ms. Shakow: Is there any other matter, a case, a public policy issue that you've been involved in since 1981 that we haven't mentioned and that you'd like to talk about?

Mr. Civiletti: Well, one public policy issue which I have been involved in for almost the entire time and that is the relationship between the Department of Justice and congressional committees, and I got in a big fight with one chairman. This is a fellow who would beat up on the Defense Department and he had one of the huge staffs, investigative staffs up there, 150 people. It starts with a "B" or a "D." Anyway, I took the position and have always taken the position that line attorneys who handle cases should not be subpoenaed before the committees unless there is specific evidence of bribery or corruption or dereliction of duty, which there seldom is. That instead, the Assistant Attorney General of the particular division of the Department of Justice or the Deputy or the Attorney General should submit to the inquiry and the questions and the justification for the prosecutions and all the statistics relating to them or whatever it happens to be. Because otherwise, if someone who is a line attorney or the head of a section, of the Criminal Division let's say, fraud or public integrity, if either one of them has to worry that someone is going to be looking over their shoulder when they make decisions and second-guessing themselves, then their decisions are tainted by that effect rather than simply on the merits. So I wanted them always to make their decisions purely on the merits, whether it was

prosecution or nonprosecution, and not have to go up and be embarrassed by questions from the Congress. And I related it back historically. Well, this particular chairman —

Ms. Shakow: Dingell was it?

Mr. Civiletti: Dingell, that's exactly who it was — took umbrage at that and said that is total nonsense. We have a responsibility to look at everything. There's no legal justification for this distinction that Civiletti tries to make. So I've been in that battle for 20 years.

Ms. Shakow: A big bully of an enemy.

Mr. Civiletti: Although he's been reduced — the only good thing about the Republicans having control of the House.

Ms. Shakow: In an interview published in the *Washington Lawyer* you said that your hobbies are golf and gardening. Is this still true? And when do you find time to do either?

Mr. Civiletti: It is still true and I make time. And I do it in spurts. I may not play golf in the seasonal weather for two or three weeks and then I'll play four times in a week, and I seldom turn down an excursion opportunity to play golf — to go to Myrtle Beach or to go to Ireland or Scotland or whatever. I've never played in Ireland and I'm anxious to do that. And gardening, my wife likes to garden and I like to garden and so we're out and — I like to do all kinds of gardening — vegetable gardening and trees, flowers — I love flowers anyway. When I was in college I was a mason's helper, so I learned something about walls and patios and stone work and bricklaying and those kinds of things, so I fool around with stones to some extent.

Ms. Shakow: If you have any free time in the spring, I'd be happy to see you.

(Laughter) Well those are two lovely hobbies.

Mr. Civiletti: What I'm looking forward to, because I like working with my hands, is woodworking. And I do a little bit of it now, but I'm too ignorant to do anything serious. But I'm looking forward in the future to taking some woodworking courses at Winterthur, and they offer a two-week course of woodworking and cabinetmaking.

Ms. Shakow: I think of them in terms of gardens.

Mr. Civiletti: They have beautiful gardens.

Ms. Shakow: I have their calendar on the wall in my kitchen. Are you a grandfather now?

Mr. Civiletti: Eight times. Six boys and two girls. Ages nine months to twelve years.

Ms. Shakow: Oh, that's perfect. Some of them are your daughter's children who lives quite close to you.

Mr. Civiletti: Two of them.

Ms. Shakow: Are the others nearby?

Mr. Civiletti: Four of them are in Wilmington and two are in Maine.

Ms. Shakow: That's the only long haul. That's wonderful. I'm new to that business and just love it. I just absolutely love it. Finally, do you plan to stay at the firm indefinitely or do you see retirement on a date certain in the future? Is there a policy in the firm about retirement? I don't mean to pin you down if you are just not sure.

Mr. Civiletti: There is a policy and it's either retire at 65 or take a countdown, 65 to 68. Then the firm can extend that countdown in two-year slices until 72 or something. So when I was 64, the board came to me and said we'd like you to stay and we would like to enter

into an understanding with you to stay for five years after 65.

Ms. Shakow: On a full-time basis?

Mr. Civiletti: Yes. However you want to do it. So I said all right. I'm not promising that I'll do that, because things might change. I might not, physically, feel well or whatever, but my present intention is to stay for those five years. So, last year I was 65, so this is the first year after that. I'm going into the second year after that and so if I stayed to 70, I would stay another three years I guess. I don't know about that. I'm not so sure about that.

Ms. Shakow: Well, you seem to be in very good health and —

Mr. Civiletti: I seem to be, as far as I know.

Ms. Shakow: On the other hand, you seem to be a person who has enough interests outside of the practice of law to keep you going I suppose, if the —

Mr. Civiletti: Well, that's interesting. That is true. But it is interesting that any number of my friends and now even people who were my subordinates or my assistants to me have retired. And so when they do that it makes me pause every once in a while and say well, how come they're retiring and I'm working. And I finally resolved that question, so that I don't have to ponder it anymore. I must like what I'm doing and I'm doing it by choice. It's not an accident. And when I don't like it anymore I won't do it.

Ms. Shakow: Well, I'm certainly glad to have met you and I thank you for all the time you've given.

Mr. Civiletti: Well, it's been fun, Pat. You're more than welcome.

Ms. Shakow: It's been really delightful getting to know you and to relive some of these times myself since we are contemporaries and knew a lot of the same people.

Mr. Civiletti: Let me tell you one story to close out the meeting. You mentioned a congressman earlier who was the chairman of a subcommittee when I was Attorney General, was writing letters and calling about the FBI not doing enough to investigate a certain disreputable organization and demanding a meeting with me. And I put him off and put him off and put him off. So finally we arranged a meeting about 6 o'clock one evening and he appeared with a whole entourage of maybe 15 people. And we sat down and it was — I think it was in the wintertime or it had been chilly out — and he sat down and said, “Now I want to know what the Bureau and what you’re doing about investigating the X organization.” So I started to tell him in a wonderful soft monotone. Within three minutes he was sound asleep.

Ms. Shakow: (Laughter)

Mr. Civiletti: And so were some of his entourage. So I continued to talk for 25 minutes without changing tone or pace or anything.

Ms. Shakow: Or letting on that you noticed.

Mr. Civiletti: And at the end of the 25 minutes I went [banging a book down on the table], “That’s what we’re doing about going after X.” And he kind of sat up and he said, “Oh, wonderful, wonderful, wonderful. This is one of the best meetings I’ve ever been at. Don’t you agree gentlemen? Thank you so much Mr. Attorney General.” (Laughter)

Ms. Shakow: That’s wonderful story. And it shows both a sense of humor and what a gentleman you are. Thank you, Ben.