

ORIGINAL

INTERVIEW

OF

THE HONORABLE BENJAMIN R. CIVILETTI
ATTORNEY GENERAL OF THE UNITED STATES

WITH

RON OSTROW

OF THE
LOS ANGELES TIMES

TUESDAY, NOVEMBER 6, 1979

10:00 A.M.

WASHINGTON, D.C.

P R O C E E D I N G S

1
2 (The first question or questions of this interview
3 apparently were not recorded on this tape.)

4 ATTORNEY GENERAL CIVILETTI: -- those two pieces of
5 legislation pending. Another area, of course, depends on the
6 outcome of -- in part, on the outcome of the analysis of the
7 judge's decision in the Philadelphia case.

8 MR. OSTROW: Yeah, that is my next question. When
9 will that be sued -- through suit(?)?

10 ATTORNEY GENERAL CIVILETTI: I would think it would
11 be through within 10 days.

12 MR. OSTROW: And that is what? That is a question of
13 whether you can appeal the standing part of his ruling, if the
14 rest of it -- if there is still a suit in existence?

15 ATTORNEY GENERAL CIVILETTI: It is two questions:
16 The procedural question of appeal, and interlinking of the
17 principle of nonappealability of interlocutory orders --

18 MR. OSTROW: Uh-huh.

19 ATTORNEY GENERAL CIVILETTI: -- and secondly, the --
20 based on the judge's analysis and reasoning, the soundness and
21 the chances of reversal on appeal.

22 MR. OSTROW: How soon do you think there will be a
23 decision?

24 ATTORNEY GENERAL CIVILETTI: Within, I think, 10 days.

25 MR. OSTROW: Within 10 days?

1 ATTORNEY GENERAL CIVILETTI: On both, yes.

2 MR. OSTROW: There were other cities mentioned at the
3 time you brought the Philadelphia suit. Are those --

4 ATTORNEY GENERAL CIVILETTI: As having been monitored.

5 MR. OSTROW: Uh-huh.

6 ATTORNEY GENERAL CIVILETTI: Right.

7 MR. OSTROW: Is that monitoring still going on? Is
8 there likely to be other suits, or are you going to --

9 ATTORNEY GENERAL CIVILETTI: There are not likely to
10 be other suits until we -- until two things have happened, one,
11 we have resolved this analysis and perhaps even the appeal in
12 the Philadelphia case, and secondly, unless and until there are
13 aggravated facts which we feel require this type of -- or
14 produce or compel this type of systemic relief effort.

15 MR. OSTROW: Uh-huh. Do --

16 ATTORNEY GENERAL CIVILETTI: And the answer is, yes,
17 other departments and other cities have been monitored and will
18 be monitored as a part of an ongoing process, and as a part of
19 an overall comprehension of the Department in assessing and
20 looking at individual 242 and 241 cases.

21 MR. OSTROW: But there is -- it is possible that there
22 won't be any other suits until Philadelphia, if there is an
23 appeal, is resolved.

24 ATTORNEY GENERAL CIVILETTI: I think that is likely.

25 MR. OSTROW: It is likely. Would there have been

1 others, had the Philadelphia not gone the way it has?

2 ATTORNEY GENERAL CIVILETTI: You mean --

3 MR. OSTROW: Were you on the verge of --

4 ATTORNEY GENERAL CIVILETTI: -- before the resolution
5 of Philadelphia? No.

6 MR. OSTROW: Or even just the trial, you would have
7 held up any others?

8 ATTORNEY GENERAL CIVILETTI: Well, we didn't have
9 any others that were ripe, number one, and number two, it
10 would have been sounder, as it has turned out to be, to await
11 confirmation of our legal principle.

12 MR. OSTROW: Uh-huh. You -- are you satisfied with
13 the success rate on these so-called "police brutality" cases?
14 They are rather hard to convince a jury of, aren't they? 241,
15 242?

16 ATTORNEY GENERAL CIVILETTI: The success rate of
17 cases which are prosecuted is good, for those kinds of cases.
18 They are extremely difficult cases, an awful lot of equity on
19 behalf of the law enforcement defendant or department, and
20 the facts are often subject to conflict. But we screen the
21 cases carefully. We bring the most aggravated cases, where we
22 think we have a sound case; and given that, the success rate
23 as far as convictions are concerned, for the Federal Government,
24 is reasonable.

25 MR. OSTROW: Uh-huh. You know, thinking over your

1 reading of that civil rights report, would it be fair to say,
2 or is it correct to say, that there is going to be new emphasis
3 on those areas that you named, and thus a deemphasis -- you
4 only have so many orders(?) -- of public accommodation and
5 school desegregation?

6 ATTORNEY GENERAL CIVILETTI: No. It wouldn't be
7 right. Let's say that there would be an emphasis on the
8 former, and there would be a continuation of the latter. They
9 would have to be refocused. The law is more clear in those
10 areas. Cases are frequently statistical cases, so that I think
11 it is a matter of continuing the policy in one area, and
12 direction, and refocusing and increasing the effort in these
13 other areas. It becomes a question, for instance, of how you
14 participate and how you investigate, and how you bring the
15 suits, what manner of suits to bring.

16 For example, discrimination in housing or in oppor-
17 tunities for housing, do you bring a scattered 50 cases for
18 individual deprivation of a right to an apartment, or do you
19 bring 3 cases in a city, or in 3 cities, which attack a system
20 of discrimination by zoning, financial tacit agreement, or a
21 pattern and practice of discrimination within an entire region
22 or community area?

23 MR. OSTROW: And up til now, has it been that there
24 is too much emphasis on the former, that is, the bringing of
25 scattered 50 cases? Is that what the report suggests, or is

1 that your feeling?

2 ATTORNEY GENERAL CIVILETTI: I want to make sure
3 that that is not so, that we have fully explored the most
4 efficient and best overall remedy for our resources that we
5 have. You can't say that an individual suit that provides for
6 relief, in someone obtaining an apartment who otherwise
7 wouldn't get one, or punishing someone who breaks the law by
8 discriminating, is not worthwhile. It is. But the question
9 is whether it is more worthwhile to provide the same kind of
10 remedy to a whole class of people --

11 (There was a brief interruption and exchange of
12 remarks between the Attorney General and an unknown third party.)

13 MR. OSTROW: Oh, one thing I want to be sure to
14 cover is, when Attorney General Bell left, that last breakfast,
15 he was talking about things that hadn't gone all well, and one
16 of them was INS, and that -- he conceded that the only thing
17 that had been done there, really, was a start towards
18 modernization of some very outdated paper systems, and that
19 was the thrust of what he said.

20 Have you got anything in mind for INS, other than,
21 obviously, filling Castillo's(?) spot?

22 ATTORNEY GENERAL CIVILETTI: Yeah, there are any
23 number of things that are going on with regard to INS. Number
24 one is the Select Commission, of course, that I am on, and I
25 have attended one plenary meeting of the Commission and intend

1 to attend a hearing on -- one on December 5th, I think, and
2 one on the 17th. They are the second and third of twelve
3 hearings of the Select Commission with regard to Immigration
4 and Refugee Problems. On a broad-scaled basis, they have a
5 short timetable, I think 12 months to complete their recom-
6 mendations and reports, both administratively and legislatively.

7 Secondly, as a result of diplomatic relations with
8 Mexico, there are nine working groups dealing with a whole
9 range of relations with Mexico, but at least two of which deal
10 with water problems and immigration problems with Mexico.

11 Thirdly, I have had one staff meeting to deal with
12 INS and with Shenfield(?) and with other persons, to deal with
13 what are problems and potential actions that can now be taken,
14 or can possibly be taken, policy decisions that can be made
15 which will assist both law enforcement on the border, and
16 secondly assist the victimization of illegal aliens that occurs
17 from time to time. And I would think -- and I think that
18 within about a couple of weeks -- I have reviewed already the
19 preliminary reports with regard to a range of those issues --
20 I will be prepared to make the policy decisions and then imple-
21 ment their being carried out.

22 For example, we have, in fiscal '80, an increase of
23 roughly 500 positions for the Border Patrol. I want to make
24 sure that those positions are allocated in such a way as to
25 strengthen the Border Patrol, and reduce the potential for

1 friction or abrasion between the border patrol legitimately
2 doing their job, and the entry of illegal aliens.

3 Secondly, an issue that I am reexamining now is the
4 question of the soundness, efficiency, and wisdom of residen-
5 tial investigations. Thirdly, looking to moderating or
6 making -- or obtaining satisfactory solution to some of the
7 problems caused by the material witness rule. Fourthly, the
8 question of prosecutive priorities and what are crimes --
9 areas in the border crime area -- making sure that we are --
10 have an established set of criteria for focus and making of
11 cases. I think the policy should probably be concentration
12 on smugglers, and concentration on illegal entry which is
13 combined with violence, contraband, weaponry, etcetera.

14 Things of that kind. Those are four or five examples
15 of six, seven, eight, nine, and ten issues which need decision.

16 MR. OSTROW: And probably in two weeks there will be
17 a decision?

18 ATTORNEY GENERAL CIVILETTI: Yeah, and then there
19 will be various forms of implementation. Some will -- can be
20 implemented immediately; some will require analysis, and a
21 policy statement; others will look to a revision, for example,
22 in the training program of the Border Patrol, and things of
23 that nature.

24 MR. OSTROW: Uh-huh. How about this neighborhood
25 investigation -- residence investigation? What could -- you

1 are just thinking of calling it off?

2 ATTORNEY GENERAL CIVILETTI: No, I am evaluating its
3 effectiveness, its necessity, and its wisdom. Pros and cons.

4 MR. OSTROW: Did it come over from INS to you --

5 ATTORNEY GENERAL CIVILETTI: Yes.

6 MR. OSTROW: -- with any recommendation, or was it
7 just both sides --

8 ATTORNEY GENERAL CIVILETTI: No recommendation.

9 MR. OSTROW: No recommendation. They are not in
10 abeyance now, they are still going on, right?

11 ATTORNEY GENERAL CIVILETTI: At the present time,
12 the -- there are no random searches in residences. There are
13 no entries without consent. There are no pattern of search
14 warrants and, you know, massive searches. There are, as I
15 understand it, a limited number of investigators who only
16 respond to specific information in a particularized area, and
17 only enter with the consent of the residents -- resident.

18 MR. OSTROW: But even that, you are now evaluating?

19 ATTORNEY GENERAL CIVILETTI: That's right.

20 MR. OSTROW: You had -- you also, early in your
21 tenure, announced a stale case study.

22 ATTORNEY GENERAL CIVILETTI: Right.

23 MR. OSTROW: How is that going?

24 ATTORNEY GENERAL CIVILETTI: I do not have the report
25 yet. I have oral statements with regard to the report, which

1 indicate that, for example, some of the Divisions have closed
2 anywhere from 150 to 300 cases.

3 MR. OSTROW: Since the study was begun?

4 ATTORNEY GENERAL CIVILETTI: Since the direction and
5 order went out.

6 MR. OSTROW: Uh-huh.

7 ATTORNEY GENERAL CIVILETTI: It is not a -- it is
8 two parts. It was a direction and, in fact, an order; and
9 then the second part of it was an analysis or study of those
10 cases which were old or to determine causes, and then an
11 evaluation of those causes to attempt to determine remedial
12 action, if possible, to remove the causes or some --

13 MR. OSTROW: Uh-huh. Back to INS for a minute.
14 Have you yet recommended anyone for the Commissioner's job?

15 ATTORNEY GENERAL CIVILETTI: To the President? No.

16 MR. OSTROW: To the White House staff?

17 ATTORNEY GENERAL CIVILETTI: No comment.

18 MR. OSTROW: Is it likely to be a Hispanic in that
19 job?

20 ATTORNEY GENERAL CIVILETTI: I don't -- Hispanics,
21 certainly, are being considered and if we settle on a qualified
22 Hispanic, I think would perform -- he or she could and would
23 perform well.

24 MR. OSTROW: Is both the number one and number two
25 position, are open over there?

1 MR. OSTROW: Are there other changes that -- in the
2 offing, for INS, that -- is there going to be a wider shift
3 than that overturn(?), or whatever you are going to call it?

4 ATTORNEY GENERAL CIVILETTI: You mean in personnel,
5 some kind of a shake-up or something?

6 MR. OSTROW: Uh-huh.

7 ATTORNEY GENERAL CIVILETTI: Generally, no. There
8 may be specific areas, I guess, limited areas, but generally
9 no. That will be up to, and I would look to evaluation by the
10 new Commissioner, of the staff.

11 MR. OSTROW: Uh-huh. How about your view now of
12 the Gannet(?), the whole question of open trials?

13 ATTORNEY GENERAL CIVILETTI: My view is that I am
14 strongly in favor of the principle of open trials and pre-
15 trials, as a policy matter for the Department of Justice and
16 the Federal Government; and there are rare exceptions to that,
17 and those exceptions are limited in terms of subject matter
18 and the part of the proceeding, or the evidence, which is or
19 should be sealed or closed. And they deal essentially with
20 national security or secrets or greymail problems, and with
21 unnecessary, humiliating or degrading parts of testimony which
22 may be essential to the factual determination.

23 Thirdly, cases of a pretrial motion, a part of
24 which involves disclosures which would not be admissible in
25 the merits of the proceeding, but only in a suppression hearing

1 or on evidence, illegally seized evidence or confessions. And
2 even then, if there are safeguards to prevent the destruction
3 of a fair trial, the Government would always look to those
4 alternatives rather than even closing any aspect of a pretrial
5 proceeding. And in the informal reviews, and checking with
6 U.S. Attorneys and the U.S. Attorneys' Advisory Committee, the
7 number of such proceedings, trial or pretrial, in which the
8 Government has agreed to a defendant's motion, are infinitesimally
9 small. Ordinarily the Government opposes that kind of motion,
10 and very rarely makes such a motion.

11 The only case in which that statement is not correct
12 is in the espionage case, (inaudible).

13 MR. : Ron, just so you know, there are
14 about seven or eight minutes left, for your guidance. We have
15 less time than I indicated we would.

16 MR. OSTROW: Uh-huh. Now that the Progressive case
17 is history, if it were to do over again, regardless of its
18 final outcome, would you think it was a good case to bring?

19 ATTORNEY GENERAL CIVILETTI: In hindsight, it is
20 questionable, and that is because the facts changed so drama-
21 tically during the course of the case, of the facts which were
22 presented at initiation.

23 MR. OSTROW: How about if they hadn't changed, just
24 given the facts that caused the Government to bring the suit
25 in the first place?

1 ATTORNEY GENERAL CIVILETTI: I think that probably
2 the decision would be made the same way again.

3 MR. OSTROW: Uh-huh.

4 ATTORNEY GENERAL CIVILETTI: If there had been no
5 public disclosure, if the scientific evidence was that the
6 secret was, indeed, secret, and if it was such a momentous
7 nature as the H-bomb, I think the Government would.

8 MR. OSTROW: You know, jumping back to that stale
9 case study, for a minute, you said that --

10 ATTORNEY GENERAL CIVILETTI: Steel case study?

11 MR. OSTROW: Stale, stale. I was going to get to
12 that, too. You said there was about 100 to 150 --

13 ATTORNEY GENERAL CIVILETTI: No. I said 150 that
14 I have had orally reported to me. I have not seen the complete
15 report. It is not here yet. Orally, it has been reported to
16 me that some -- that the Divisions have closed 150 to 300
17 cases.

18 MR. OSTROW: Does that suggest that the -- the
19 hypothesis you must have had when you announced that study,
20 that there were a lot of old cases around that should have been
21 closed, was indeed correct, is that number of closings in that
22 period?

23 ATTORNEY GENERAL CIVILETTI: Can't tell that, you
24 know, just from those figures. It suggests to me, as in any
25 lawyer's office, in any Government office, that periodically

1 you have to take a sharp look at your case load, to see with
2 review or some closing work, you can not reduce the case load.

3 The tendency, of course, is to work for new cases
4 and bigger cases, and some of the cases which are either
5 almost or practically over remain open, simply because they are
6 compelling, or they don't need attention.

7 MR. OSTROW: And it is too early, because you haven't
8 got the report yet, to --

9 ATTORNEY GENERAL CIVILETTI: That's right. All I
10 have is what I have told you, so far.

11 MR. OSTROW: Uh-huh. I realize that you -- it is
12 difficult for you to comment anything about the Jordan matter,
13 but apart from the Jordan matter, let me ask you law itself.
14 There hasn't been any resolution that any of us know of, or
15 any outsiders know about, whether you can grant immunity in the
16 preliminary inquiry stage. There hasn't been anything public,
17 anyway, any decision. Isn't this -- if there is no ability to
18 grant immunity, doesn't this mean that this can on all through
19 the campaign, that people can just pop up with allegations?

20 ATTORNEY GENERAL CIVILETTI: No.

21 MR. OSTROW: How could you prevent it?

22 ATTORNEY GENERAL CIVILETTI: Immunity isn't the only
23 tool of preliminary investigation, or even of investigation.

24 MR. OSTROW: Uh-huh.

25 ATTORNEY GENERAL CIVILETTI: So, the Attorney General

1 ATTORNEY GENERAL CIVILETTI: So, the Attorney General
2 has got a duty to conduct a preliminary investigation to
3 determine whether, under the standards by the Special Prosecutor
4 Act, the case is without merit or frivolous; or whether it
5 needs further investigation, either in terms of time beyond the
6 90 days, or in terms of those techniques which go beyond a
7 preliminary investigation; or thirdly, it requires careful
8 weighing of a prosecutorial decision, which is really the
9 function of a Special Prosecutor.

10 But if it doesn't require investigation, if it is
11 unsubstantiated or without merit, and if the decision is a
12 fairly clear one, then allegations do not require that appoint-
13 ment. Mere allegations do not require the appointment of a
14 Special Prosecutor --

15 MR. OSTROW: Uh-huh.

16 ATTORNEY GENERAL CIVILETTI: -- and you don't need
17 to issue an immunity, necessarily, to make those determinations
18 in every case.

19 MR. OSTROW: Have you made a decision, in the Jordon
20 matter?

21 ATTORNEY GENERAL CIVILETTI: No.

22 MR. OSTROW: You have not?

23 ATTORNEY GENERAL CIVILETTI: No.

24 MR. OSTROW: Is one likely this week?

25 ATTORNEY GENERAL CIVILETTI: No comment.

1 MR. OSTROW: Let me ask you about your -- one of your
2 other hats, national security and that business. Is there
3 anything going on, you can tell me at all, about Iran?

4 ATTORNEY GENERAL CIVILETTI: No.

5 MR. OSTROW: Likely to be before the day is out?

6 ATTORNEY GENERAL CIVILETTI: I can tell you this:
7 I am conducting, today, an assessment of all facts and know-
8 ledge that Justice possesses with regard to Iranian interests
9 in the United States.

10 MR. OSTROW: Facilities of theirs here? Investments?

11 ATTORNEY GENERAL CIVILETTI: Not so much that, no,
12 because unless it had some relationship to litigation or trial,
13 that would not be within our bailiwick or jurisdiction; but
14 just what the legal issues are with regard to Iranian interests
15 in the United States, and -- (The Attorney General's response
16 was interrupted here by the end of the first side of this tape.)

17 MR. OSTROW: Do you then report that to the White
18 House, or is that for your own (inaudible), or --

19 ATTORNEY GENERAL CIVILETTI: It is both. We are
20 not -- the White House -- it is for my own knowledge and
21 judgement, and it is also so that I can participate, where
22 appropriate, in Security Council considerations.

23 MR. OSTROW: Uh-huh.

24 MR. : We are, ah --

25 ATTORNEY GENERAL CIVILETTI: That's all right. You

1 got a couple that you want to run through?

2 MR. OSTROW: Yeah, just -- I am a little hung up on
3 the word "interests". I want to make sure I am understanding
4 what you are saying, when you say "Iranian interests here".
5 That's why I said, do you mean facilities and investments?
6 And you said, no, not so much --

7 ATTORNEY GENERAL CIVILETTI: "Interests" means every-
8 thing, anything and everything that comes within the Department
9 of Justice's legitimate and lawful knowledge and jurisdiction.

10 MR. OSTROW: Uh-huh. Is this a prelude to some
11 possible action by the United States, in view of what is going
12 on with the Embassy there?

13 ATTORNEY GENERAL CIVILETTI: It is to know what the
14 facts are and the law is, so that you will be prepared to take
15 appropriate action, if necessary.

16 MR. OSTROW: Is this at the direction of the President,
17 that you are doing this?

18 ATTORNEY GENERAL CIVILETTI: I think it is a part of
19 the overall National Security Council concern, and evaluation
20 of issues and alternatives in this terrible circumstance in
21 Tehran.

22 MR. OSTROW: Uh-huh. And you -- how soon do you
23 expect to have it all done, the assessment you are directing
24 to be done?

25 ATTORNEY GENERAL CIVILETTI: Well, I am not sure. As

1 soon as possible.

2 MR. OSTROW: Is it something in a matter of hours,
3 or is it likely to take days, or --

4 ATTORNEY GENERAL CIVILETTI: I think it depends upon
5 the depth of the assessment.

6 MR. OSTROW: Uh-huh. There is no due date for
7 reporting to the President, or --

8 ATTORNEY GENERAL CIVILETTI: There is, but I am not
9 going to discuss it. And it will not be one report, or, you
10 know, one evaluation.

11 MR. OSTROW: Uh-huh. I see. Thank you very much.

12 ATTORNEY GENERAL CIVILETTI: Nothing else?

13 MR. OSTROW: Oh, I have got other things, if you
14 want --

15 ATTORNEY GENERAL CIVILETTI: Go ahead. Run on some.
16 Just take --

17 MR. OSTROW: You really want me to go on?

18 ATTORNEY GENERAL CIVILETTI: Sure. Just take a
19 couple of shots.

20 See if the people are out there, Bob.

21 MR. : All right. Would you try to make
22 your questions shorter, please?

23 MR. OSTROW: Yeah, I'll try.

24 ATTORNEY GENERAL CIVILETTI: I thought you were going
25 to say that to me: Make your answers shorter.

1 MR. : He knows what I'm talking about.

2 MR. OSTROW: (Laughter.) I was wondering about the
3 Judge Renfrew business. I realize there has been no nomination,
4 only the news that you had made a recommendation; and then I
5 saw a story today that the White House is standing behind him,
6 and so on. What did -- do you have an evaluation you can make,
7 without announcing that he is -- of that criticism that
8 Hispanics are making, based on --

9 ATTORNEY GENERAL CIVILETTI: Without merit.

10 MR. OSTROW: Without merit? Have you, yourself,
11 read the --

12 MR. : Excuse me for one second.

13 ATTORNEY GENERAL CIVILETTI: Yes?

14 MR. : Can I see you?

15 ATTORNEY GENERAL CIVILETTI: Is everyone there?

16 MR. : Everybody is there, and I --

17 ATTORNEY GENERAL CIVILETTI: Except a few?

18 MR. : -- I think we have to ask you to
19 leave now.

20 MR. OSTROW: Okay. Have you read the thing? The
21 Law Review --

22 ATTORNEY GENERAL CIVILETTI: Yes.

23 MR. OSTROW: You have? And that is where you come
24 to the conclusion that you are not --

25 (End of interview. Tape recording stops at this point.)