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NICHOLAS D. KATZENBACH ORAL HISTORY INTERVIEW I

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ACCESSION NUMBER 78-24

INTERVIEW I

DATE: November 12, 1968

INTERVIEWEE: NICHOLAS KATZENBACH

INTERVIEWER: PAIGE E. MULHOLLAN

PLACE: Mr. Katzenbach's office at the State Department,
Washington, D.C.

Tape 1 of 1

- M: You joined government service for the first time in 1961, I believe; is that not correct?
- K: Not entirely. I had worked over in the Pentagon, 1950 to 1952, in the General Counsel's office in the Air Force.
- M: Did you have occasion during that time to come in contact with the then Senator Johnson? I guess he was on the Preparedness Subcommittee.
- K: At that time he was chairman of the Preparedness Subcommittee. Yes, I did, but only marginally and slightly in ways which he did not remember. We had one incident when I was over there which involved the news story that coffee grounds, fresh coffee, was in such great excess supply in the Air Force that it was being used at the Carswell New Mexico Air Force Base to sweep the floors instead of a sweeping compound. That received tremendous publicity. This came as a result of one of the investigators of the Preparedness Subcommittee.
- M: Mr. Johnson was chairman?
- K: Mr. Johnson was chairman of it. And that story had editorials in Life Magazine and almost every major newspaper or magazine in the country, proving the waste of military expenditure and praising the subcommittee for uncovering this. Now, I was in charge of the investigation to find out what had really happened here, because it damaged the Air Force a great deal. We found that in fact coffee had never been used for this purpose, and that the investigator had just taken a kidding remark by a mess sergeant for a serious statement.
- M: This is the kind of thing that becomes a national issue?

K: And it was a major national issue. But recollection is that we couldn't persuade Senator Johnson to recant on the story at this point; and we were forced to put out our own explanation.

M: You didn't get involved with him on the big issue in those years, the so-called "70 Group Air Force?"

K: I was never really involved with him on that. At that time I also did have contact with Cy Vance, who did some work for the Senate Preparedness Committee during that period, but that's the only incident that I recollect of direct contact with then Senator Johnson. If he had remembered that, he might not have been so enthusiastic about me.

M: Maybe that's why he was. You went out there and found out that it was all right at Carswell. Then when you came to the Justice Department in 1961, did you ever have any occasion to work directly with President Johnson while he was Vice-President?

K: Yes, almost at the very beginning because at that time President Kennedy wanted to beef up the Vice-President's chairmanship of the Committee on Equal Employment Opportunity and had a new Executive order drafted on this. I worked directly with the Vice-President and with Abe Fortas and with Bill Moyers--

M: Through his connection with the Committee on Equal Employment?

K: Yes, which he was going to be chairman of. To make sure that it satisfied him and to make it as strong as we felt it was constitutionally possible to make it.

Also, at that time, very early, I remember he expressed an interest in just what the limits of the Vice-President's executive powers might be, because of the unique position of the Vice-President as being an Executive Branch member but the only one to have any legislative responsibilities.

M: This was a legal question?

K: Yes. He really wanted to know what the constitutional limits of this might be, and I guess to some extent the history of the office. We wrote him a quite long memorandum, and I think a quite good one on that. He had some concern as to how much executive responsibility the Vice-President should exercise and some concern about, for

example, the Committee on Equal Employment Opportunity which he was enthusiastic about, but he had some concern constitutionally. Also about the Space Committee, which the Vice-President chairs. He simply wanted to know how far this was constitutionally permissible, so I had some contact with him on that.

M: Generally speaking, what was the result of that? Did you find that the Vice-President had perhaps more executive authority than had generally been thought?

K: Yes. At least it was our view that he was a member of the Executive Branch with only this very narrow legislative function, but there were no executive powers that would have been improper for him to exercise. He really was a member of the Executive Branch.

The other contact that I remember was a slightly more amusing one, and this came fairly early. He'd sworn in a couple of people and he just checked to make sure he had the authority as Vice-President to swear people in, which he did not have.

M: This was after the event that you checked on it?

K: So he said "Could you draft me something we could just stick on as a slight rider on one of these bills down here to make sure that I do have authority?"

We had advised him that it might be better if he did not have authority, on the theory that a lot of people might be asking to be sworn in by the Vice-President; but he wanted it, so we got it for him legislatively, my recollection is, after he had already sworn in some people.

M: This is, I am sure, a very difficult question, but you served through the transition in administrations in the Justice Department. How much can a President influence the direct operation of a department like Justice or State or any of the others? Does he do it importantly? Does he really put a personal stamp on its operation?

K: I think that must vary to some extent from department to department. Certainly, the President can and has--and this would be true of both President Kennedy and President Johnson--but in the Department of Justice, there are only really certain areas where this can be done. You can pursue certain things, but a great deal of the work of the Department of Justice is simply executing and enforcing laws

that are already on the books. A large part of it is that way, and the President doesn't tell you which laws to enforce and which laws not to enforce; nor would he want it that way nor would he want to in any way second-guess his Attorney General on a legal or constitutional issue, which is not a matter of policy--it's a matter of law. In this sense there's a difference between the Department of Justice and the Department of State.

M: Where policy matters--?

K: Where policy matters are much broader. Now within the Department of Justice, you can influence those areas that are more discretionary. For example if you have, as President Kennedy had and President Johnson had, a very vigorous policy with respect to civil rights, you certainly influence both the legislative course of that and the resources put into it and the general philosophy of how this is going to be administered.

M: And that way would put your personal--

K: And that way you put your personal stamp on it. The same thing could be true but to a slightly lesser extent in the field of antitrust. Which kinds of cases, where you have limited resources; where are you going to focus your energies? The same thing could be true on such things as the enforcement of criminal laws, how much of your resources are you going to put into the investigation of organized crime, for example? So you do have these opportunities to allocate resources. Or in the prison system--what is your philosophy going to be? What's the President's philosophy going to be with respect to pardons? Both President Kennedy and President Johnson had a quite liberal policy with respect to pardons. Both Presidents were insistent in all matters in the Department of Justice that political considerations be given no weight whatsoever. The best politics were no politics at all.

M: You're sort of anticipating my further questions. Were there differences, important differences, between the way that President Kennedy influenced the Justice Department as compared to the way that President Johnson handled it?

K: It would be hard for me to answer that question, because President Kennedy exercised his influence largely through his brother as Attorney General, and I worked much more directly with President Johnson, so that in this sense I don't have an equal access because of the different

positions involved in it. I would say that both President Kennedy and President Johnson made very clear their views on civil rights. In a way President Johnson, I think to establish his own credentials, since he came from a Southwestern state, wanted to make very clear what his views on this were and to be very vigorous in the enforcement of it. I don't say this to take away from President Kennedy, but I think that President Johnson wanted to make absolutely clear to the Negro community and to others that there was going to be no letup in this.

M: President Kennedy didn't have the need to prove that?

K: He didn't have the need to prove that. I think President Johnson felt some need to prove it; I don't know why--he had good credentials on civil rights; but at the same time, I think that he did and therefore in this sense he picked it up and gave it even more, at least public, attention. And of course he picked up the 1964 Civil Rights Act and the 1965 Civil Rights Act and all of these problems, but he wanted to make it very clear--and did--right at the outset of his administration that this was something he was going to move forward in every possible way and with much more than deliberate speed.

M: How does the Justice Department relate to the rather substantial staff of lawyers that work directly for the President? The President has a staff of advisors, most of whom are attorneys--how does the Justice Department fit into that?

K: The President gets his legal advice from the Justice Department and particularly from the Office of Legal Counsel there rather than depending on his own staff. There's a tremendous advantage in doing this; it is dangerous to depend on your own staff because they simply don't have the time and experience and the files on some of this that are absolutely essential to giving good advice to a president. The files in the Office of Legal Counsel go back through the years; you know what other presidents have been advised; you know where other presidents have gotten in trouble, and in terms of amassing expertise about the legal powers of the President and all of those considerations, they can produce work of high quality and correctness in ways that nobody, starting the problem anew, can possibly do. There are problems that are new to President Johnson that are not new to past presidents. And there are no files in the White House that would tell any lawyer in the White House that fact.

- M: Do those lawyers in the White House, either under Presidents Kennedy or Johnson, ever give contrary advice to the Justice Department; ever get into competition with it?
- K: I don't think they ever did when I was there, and it's a very bad practice and I don't think it really occurred. In either instance, it's a very bad practice for anybody on the White House staff to get involved with any litigant or any case.
- M: I can see how that could lead to an issue of substantial--
- K: Well, immediately, whatever they do or don't do, whether they're right or whether they're wrong, it suggests immediately a political influence. I think the Department of Justice has, throughout the years under both Republican and Democratic administrations, acquired a reputation for being nonpolitical and for handling cases on a nonpolitical basis, and it's very vigorously defended by the professional lawyers in the Department of Justice that this should be so.
- M: After President Johnson took over, Mr. Robert Kennedy served on as Attorney General into the end of 1964, is that right, and then you were Acting Attorney General for about five or six months?
- K: Let's see--actually from some time early in September, [1964] the first week in September, to February 13, [1965] I guess.
- M: Are there any particular problems involved in trying to run a department like that, as an "Acting" Attorney General rather than as the Attorney General?
- K: Some. The sorts of problems that you have are to some extent morale within the department which you have to worry about, at least after a certain point. You don't have a deputy which means you've got to pull a bit of a double load; you're just missing an important cog in the machinery; and finally, there are the problems of whether or not you ought to make decisions if you're not going to be the Attorney General, if somebody else is going to come in. Are these decisions that ought to be left for somebody else that might see a situation somewhat differently? So there are some problems to doing it.
- M: President Johnson has done this on several occasions. I believe he made Mr. Clark "Acting" for some period of time prior to his appointment, and he has done this in other

agencies, too. Did he ever indicate to you any reason why such a long period of time elapsed before he finally promoted you?

K: No. He never did, and I never complained. I don't think Mr. Clark ever complained, and I doubt that President Johnson was aware of the kinds of problems you really can have on this. I don't suppose he's particularly conscious of them.

M: It was charged, I think, in the press at the time--I don't know with what accuracy if any--that Mr. Johnson was afraid or unhappy that the Justice Department was a "Kennedy" department rather than a Johnson department. Do you think he ever had any of this fear or was there ever an indication that this was a consideration?

K: Well, he never really gave any indication that that was a consideration. I could have understood it in view of tensions that existed between some of the Kennedy people and some of the Johnson people, although I think the press tended to play these up perhaps more than they were real. I think that was true, certainly true, in the Department of Justice. Burke Marshall was a Kennedy appointee, and certainly he was a man that President Johnson had nothing but the greatest admiration for. And I think he came to have confidence in the people who were there and of course in time--many of them had been there four years--they tended to leave.

John Douglas was another Kennedy appointee that I know that President Johnson had a very high regard for.

M: Then most of them were able to work effectively for the new Administration and earn the respect of the new Administration?

K: Yes. I think so. Some of them left but not particularly for that reason. Many had planned to leave after four years anyhow.

M: There's a pretty fast turnover, I expect, in any of those positions regularly.

I believe one of the innovations in the Justice Department in fairly recent times is what they call over there the "Strike Force Concept." Did that come in while you were there?

K: We were working on the idea. The great problem with really making it work was simply that the FBI did not want it.

M: Did not want the strike force concept?

K: Did not want the strike force concept.

M: Why?

K: They wished to do it themselves. The FBI has always been very, very jealous of prerogatives in working with any other agency. An investigation is either theirs or somebody else's. While they're willing to use information provided by somebody else, they have in their own view, at least, a history that indicates that unless they have full responsibility for it, they shouldn't get involved in it because somebody else may mess it up and the FBI will get the criticism for its being messed up. They're a very tight agency and have great objections to this, and this has been the problem all along with the strike force concept. Mr. Hoover simply didn't want it.

M: That's fairly formidable opposition I expect.

K: That's fairly formidable opposition, and so I never was able to get it off the ground.

Really Attorney General Kennedy tried it, but he really constantly ran into the FBI and its opposition to this.

M: This is an attempt to promote interagency cooperation, as I understand it, on any problem that happens to cut across departmental lines.

K: Yes, it is. That's right.

M: In this connection, and the reason it caught my attention in investigating some of your background, it seems somewhat similar to an agency over here in State, the Senior Interdepartmental Group--is this the same thing?

K: Yes, it is somewhat. Yes, it's an effort to promote the same kind of cooperation although at a rather different level. Here you're dealing really with policy considerations and there you're dealing with actual operations.

M: I see. But the problem you are seeking to solve is sort of the same here, in that you're trying to cut across

departmental--

- K: You're trying to cut across departmental lines, but they're not really too comparable. Here you're trying to resolve interdepartmental differences, there you're trying to make people in different departments work together and cooperate together.
- M: On a settled policy?
- K: On a settled policy in the investigation of an actual case. And this is simply difficult from an operation point of view. There are some jealousies in respect to all the different investigative services. The general public identifies criminal investigation with the FBI although if you look around the people involved in criminal investigation in this country, you'll find the FBI is a very small percentage of the federal investigative force.
- M: The Justice Department has of course people involved in that.
- K: And many more people in Treasury than there are in Justice.
- M: You got your first national publicity, I suppose, in a case which involved FBI and other agencies as well--this was of course the Oxford riots. Did then Vice-President Johnson ever play any part in that situation at all?
- K: I have no recollection of any part he played that I had any contact with. I don't know what his relationships were with it as far as President Kennedy was concerned or even Attorney General Kennedy. I'm sure that his advice was sought, but it's awfully difficult to give advice if you're dealing with a man like Ross Barnett, who is somewhat uneven and says one thing one day and another thing another day.
- M: Is that how that situation got out of hand? Apparently President Kennedy thought that it could be handled peacefully, and then suddenly it blew up. Is that what happened--what he had been led to believe simply didn't turn out to be the case?
- K: That's right. And the great difficulty was that Barnett was taking advice from two different people and it depended which one had spoken to him last as to what he would say on the telephone with Attorney General Kennedy or anybody else.

President Kennedy was very, very reluctant to use

troops. He had perhaps overestimated the impact of this because of the Little Rock experience; he knew what had happened when the paratroopers had gone in at Little Rock, and he was very anxious not to use troops, so that we were trying to handle this with civil law enforcement forces, of which you had very little in the federal government.

M: Did you have any degree of cooperation with the local authorities there at all--that was dependable, I mean?

K: Well, not very much and this is really where the difficulty came in my judgment. It was really with the state police who didn't want to cooperate and who ostensibly were cooperating but were in fact not. And who had much more control over people in Oxford, Mississippi, than any federal force could have. We were the enemy.

M: You were the outsiders.

K: We were the outsiders and this was what caused the difficulties, and there was very little effort by the state police to exercise any control.

M: What about the FBI in this instance? Here was a case where they were supposed to be cooperating, I suppose, with other people. Did they cooperate?

K: Well, the FBI certainly cooperated. The FBI does not regard itself as an agency--they regard themselves as an investigative agency. They certainly cooperated fully in terms of passing intelligence, but not in other respects; that is, they didn't regard it as their function and they weren't asked to perform other duties there.

M: So it was really left just to the marshals--under your control?

K: To the marshals, most of whom were not really marshals.

M: What do you mean by that?

K: Well, to put together 500 marshals--we could put together about 160 marshals from around the United States; then we put together with that about 200 border patrolmen, swore them in as deputy marshals, and about 120 prison guards, whom we swore in as deputy marshals.

M: But these were all federal law enforcement officers--

K: They were all federal law enforcement officers of some kind. Those who had some experience with law enforcement in the more traditional police sense. We had tried to use some others on other occasions and it had not worked out very well. The training of some of the treasury people, the revenue officials, simply wasn't adequate to the situation. The border patrolmen were very well trained, and most of these marshals we had sent to school to get some training beforehand.

M: What was the essential difference between that situation and the later confrontation that you had in regard to Alabama? Is it just the fact that you can do business with Wallace, and you can't do business with Barnett?

K: That was part of it. Of course the fact that Ole Miss had occurred probably made some difference. And I think it was true of George Wallace that he did not in fact want any violence and really did make efforts to control the Klan, to discourage outsiders from coming around. What he wanted was his little political show in the door; he wanted to indicate that he had been forced to give up to superior federal force; he wanted troops--he wouldn't have done it without troops. And he really wanted the sort of an idea, "You have the atom bomb and we don't, and therefore I've had to give way to this no matter how wrong it is."

He wanted it for political reasons, and of course so did Barnett. But Barnett really wasn't as smart, and Wallace had the advantage of seeing what could happen if it got out of hand. That, by and large, backfired on Barnett and it certainly backfired on the University.

In addition to this, the degree of cooperation with the University was a great deal more in Alabama. Frank Rose [University of Alabama President] was determined that this should not occur and actually worked much more closely with the federal government on this than either Wallace knew or than the people of Alabama at that time would have approved.

M: Probably. In fact, it has been remarkable what he has been able to do with the University of Alabama considering the opinion down there.

K: Yes, it has.

M: You were able then to rely on what Governor Wallace told you?

- K: He didn't tell us anything really.
- M: Oh, there was no agreement in advance regarding the putting of the Negro students into the dormitories on Sunday?
- K: Absolutely not. Really one source of intelligence as to what he was and was not going to do basically came through the University officials, what they could learn. That plus our estimate that Wallace would give up; that is, if we went through the symbolic business, Wallace would give up and that we really had to give him his little show. But there was no agreement that he would.
- M: Did Mr. Johnson ever get involved in the Alabama issue?
- K: I frankly don't recollect because I was at very few of the White House conferences on this, so I simply don't know what his role may or may not have been on this.
- M: After Mr. Johnson became President and the Civil Rights Act of 1964 was moving through Congress, you are generally, and I think properly, credited with being as much its author as anybody. I wonder if you could just tell me the story of the 1964 Civil Rights Act as far as you can remember it.
- K: Well, the original structure of the act that was put in was one on which we had worked very closely, trying to get something that would meet this problem, and it had been discussed in the White House with legislative leaders and very much with the then Vice-President Johnson, who had quite an input into the structure of that act.
- M: What you're talking about now was during the Kennedy Administration?
- K: I'm talking about during the Kennedy Administration when the act was first being drafted for submission to the Congress. In this instance I recollect that Vice-President Johnson was continuously present at meetings on this in the White House, and that President Kennedy was very much relying on his judgment of the legislative situation and what was possible and what wasn't possible to achieve in that legislation.
- M: Did Mr. Johnson take a stand at that time regarding the possibility of including the article that was ultimately included, the one that had been taken out in the 1957 bill--I think they called it Article III in the 1957 bill, the one that gave the Justice Department the right to initiate actions? Mr. Johnson was responsible, I think, in

1957, for compromising on that article and then it got back into the 1964 act; did he ever express any interest in that particular problem in the early stages of its drafting?

K: I don't recollect. He talked about the experiences in 1957 and 1960 and was basing his advice a good deal on that. One of the problems we had with that article was that it was so broad in the drafts, and in a way we kept fighting having that kind of broad authority. I think it was the Justice Department's view that you shouldn't try to give the Department of Justice authority that it couldn't possibly enforce.

M: Your opinion was based not on constitutional fears but just--

K: Just plain enforcement. But we couldn't possibly do this and that meant that the Administration would be carrying on its back the stigma of nonenforcement of civil rights, when it was just impossible for us to enforce this in the broadest sense. This is why we wanted an approach that was more specific in terms of just what kinds of suits you could bring, what evidence was needed on these, and something we felt we could staff and do a reasonable job on. Because throughout, and this has been true throughout both President Kennedy and President Johnson's administrations, and it's an uncomfortable feeling for any attorney general or for any president; you get as much difficulty from the liberals as you do from the conservatives.

M: Wanting to go too far?

K: Wanting to go further than it is possible to go. At the drop of a hat, they want troops sent in. This was my constant battle and that of both presidents. Both of them, I think, shared the philosophy that I certainly had, and that Attorney General Kennedy had, that you never were going to succeed on civil rights until you could use the force of voluntary compliance with the law and not simply sending in troops and marshals and taking responsibility away from local law enforcement. And our constant philosophy on this was to make a federal system work; to use the courts, although it was slow, but to make local law enforcement obey the laws of the United States. And the second you substituted for local law enforcement, they had an out.

And of course to the liberals it constantly looked as though you were evading a responsibility--how could you expect Sheriff Lingo to enforce any racial laws and so forth

and so on?

M: And they would be the first ones to criticize it if it wasn't fully enforced after it had been written?

K: That's right, but many of them would have gone for military occupation of the South; most of us didn't think history had indicated that was a very successful approach.

M: Not at least last time. Then, carrying it on, what problems--

K: Well, there was a lot of discussion beforehand about employment and I think there was general agreement--and I think the then Vice-President shared in this--that this really was the most important thing to try to get in the law and also the most politically impossible.

M: This was because of the old FEPC [Fair Employment Practice Commission] fear mainly?

K: Yes. And so it was taken out, I believe with Vice-President Johnson's agreement--although I think he felt that really employment was the most important aspect of this, although it wasn't the one that had the most public attention. But a feeling that this was absolutely politically impossible.

Well, then it went down, went through all the hearings and revisions and was in process of moving in the House of Representatives. We very nearly failed because of a liberal-conservative coalition in the House Judiciary Committee, when the Southerners agreed to vote out the bill the liberals wanted. And they obviously agreed to it because they knew that when it got on the floor it would be recommitted, and there would be no civil rights bill. By working with the moderate and liberal Republicans and then getting enough of our Democratic liberals, we were able to defeat that by one vote.

M: In the committee?

K: In the committee.

M: How about the public accommodations section; did it cause great congressional--

K: No, Senator [Everett M.] Dirksen [R-Ill.] initially said he'd never vote for it, but we never paid attention to that on the theory that Senator Dirksen is a flexible man and can

be brought around in time. Although of course that hurt.

The key on it was Bill [William M.] McCulloch [R-Ohio] in the House, and we worked with him. We, for example, refused to work with John Lindsay [R-N.Y.], which irritated Lindsay, but we refused to work with him because we felt the only way of getting the Republican support we needed in the committee, and more importantly in the House leadership, was through Bill McCulloch.

M: Lindsay was not on the committee?

K: Lindsay was on the committee. But the only Republican man I would work with was McCulloch. By working with McCulloch and [Emanuel] Celler [D-N.Y.], the effort was to get a bill that both would agree to because we felt only in that way could we ever end up getting the bill through the House.

McCulloch at the outset insisted that he would support us, he said, but not if we were bargaining the House against the Senate. And I had to make a commitment to McCulloch that we would do everything possible in the Senate to get the same bill the House passed through the Senate and that the Administration would not remove any title of that bill as a deal in the Senate. Recall that both the 1957 and 1960 acts had been gotten through by making a deal with the Senate. McCulloch said that the House would not stand for that, and he wanted my personal word and that of President Kennedy that this would not be done. And we didn't.

Now this created quite a problem because the people who were very interested in civil rights and who had experience in 1957 and 1960--and this included Vice-President Johnson--felt the only way you could get a civil rights bill through the Senate was by that technique.

M: Asking more and then backing away?

K: And then backing away; that was their whole experience.

I remember a large meeting with some of the more responsible liberals in the House like Dick Bolling [D-Mo.] and O'Hara--Jim O'Hara [D-Mich.]--and Frank Thompson [D-N.J.] all objecting to the way in which we were doing this, and we explained that was the only way McCulloch would do it. And they said, "It won't work."

We said, "Well, we've got to try it, because otherwise you can't get a civil rights bill."

So we did it in that way and finally it got through and then went to President Kennedy's desk--we'd gotten it through the committee, got it out on the floor and succeeded in getting it through, even with a--although a very poor FEPC provision, but with that provision in there. I'll tell one story on myself here. We were having a meeting just before the vote in the committee, with the White House and before it, President Kennedy called me and asked me to be sure that there was agreement between me and McCulloch and that McCulloch spoke for Charlie Halleck [R-Ind.]. And I went through the provisions of the bill with McCulloch on the phone, made my own notes--he had a secretary on with my permission, I just made my own notes--went over to the meeting and we were all in agreement. And at the last minute, Halleck said "Of course, I can't support that FEPC provision."

And President Kennedy said "Well, Charlie, it's late; you'd better get over there and we'll vote it out."

As soon as Halleck was out of the room, he turned to me and he said, "I thought you said that he was on board on the FEPC provision."

I said, "He is, McCulloch has said so, don't worry!"

And President Johnson, after President Kennedy's death, asked me the same thing, and I said "Don't worry about it; Charlie Halleck will support it." Charlie Halleck did support it.

I looked at my notes a year later and they said, "Halleck not on board on FEPC provision." So I misled two presidents.

M: But he did support it?

K: But he did support it.

M: Well, that was a case of misleading in the right direction anyway.

K: A case of being lucky.

M: Right. Do you think the bill would have passed substantially the way it did pass had President Kennedy lived?

K: I think so. As far as the House is concerned I think we

really had it fairly well locked up, as far as the House was concerned.

M: But you hadn't really done too much work yet with the Senate--

K: We hadn't really done any work with the Senate. When it got to the Senate, it's simply more difficult for me to make a judgment as to whether President Johnson's relationships with Dirksen--of course Kennedy had pretty good relationships with Dirksen, although not as close as those of President Johnson. And President Johnson's general knowledge and influence in the Senate. It's just hard for me to make the judgment as to whether that made a difference in getting through or it might have been gotten through anyhow.

M: Did Dirksen exact much of a price in fact for his support? Did they change the bill importantly?

K: He didn't exact--the bill got completely rewritten with virtually no change of substance.

M: In other words, just rhetorical--

K: Just words; and Dirksen used that in various ways. McCulloch was satisfied that we'd kept our agreement.

In respect to that, again I think that President Johnson really felt that we were nuts in trying to think that we could get cloture in the Senate on this. I had a long talk with him about it--told him we didn't have any choice, because we couldn't give away, in view of the commitment to McCulloch. We went over the votes and he saw that at least I knew what I was talking about as far as the votes were concerned.

M: He'd had some experience in counting votes.

K: We'd had one interesting thing that happened in between, and this was that they voted cloture on the Communications Satellite Corporation bill. And there had been people who got so angry at the small group of liberals filibustering that, that they had for the first time in their lives voted for cloture. So their argument that they couldn't vote for cloture had disappeared and to say that, because of cloture alone--

M: They couldn't vote on principle any more?

K: So they couldn't do it on principle any more. And that gave us some additional votes. I said to the President--The President said that he just didn't see how you could get 67 votes. We went through--we had 58--and we went through them and he was fairly persuaded and he said "Now, where are you going to get the others?"

And I said, "Well, we've got to get nine of these fourteen to make it."

We went through them one by one, and I think I was a little more optimistic than he was, but I said to him "If you do anything publicly but indicate that we're going to get cloture on this bill, we can't possibly get cloture on this bill. And the only way we can get it is for you with your experience to express absolute confidence publicly and privately that we're going to get cloture on this bill," which was putting his neck right on the line.

And then he did that. I think it was basically the reason that we got it, because they all thought that he knew the Senate; of course, we worked like the dickens, and he worked personally very hard, on those 13 or 14 people and actually we could have gotten as many as 70 votes. We had two or three in our pocket that if it was the 67th vote, they'd vote that way.

M: You ultimately got what--68?

K: We got 68 or 69. We had a couple of more.

M: So you were home free.

K: Poor Carl Hayden was in behind, and he had never voted in his life for cloture and swore he never would, and when he was finally told he didn't have to vote for cloture, he was the most relieved man in the Senate. But I think he would have done it. I'm quite sure he'd told the President privately that he would do it; I do not know how--but we were working on all those people. I know that the President was. And this is where I say I do not know whether there was a difference between President Johnson and President Kennedy--whether President Kennedy could have gotten those votes or not, I simply don't know. We would not have gotten them without both President Johnson's personal intervention and long-time knowledge and acquaintance and secondly, the very courageous public attitude for a man who was not really persuaded that cloture could be gotten, but who was willing to put his neck right out, and if you'll look through that

period, you'll find he said constantly, "Yes, we'll get it."

M: And that probably influenced some waverers?

K: That influenced a lot of waverers.

M: One of the first major instances where that civil rights act was to be enforced by the government, I believe, involved the decision by HEW to withhold some funds scheduled for Chicago, of all places, under the civil rights act, and the incident got publicity when Mr. Johnson apparently reversed the HEW decision. Did you get involved in that?

K: Yes.

M: What were the circumstances surrounding that difficulty?

K: Well, we had some background to it, some problems throughout. I think a little bit of difference in philosophy with HEW on how you went about enforcement. We had had a lot of experience in the Department of Justice on how you got compliance in a voluntary way, and how you used court orders and so forth and didn't. As I said, it was always our policy--we never brought one lawsuit at any time in the South where we had not disclosed the whole suit that we were going to bring to the other side and sought to get it voluntarily complied with, sometimes with success--more often without it, but always an effort to say:

"Look, this is the law; you've got to compare the facts; you've got to comply with it; if you don't, we'll go to court."

HEW came into it with some somewhat newer experience and I think somewhat more heavy-handed way, with school funds, and with less experienced personnel. And we were throughout trying to get them to adopt the sort of enforcement posture that we had of saying, "We're not going to insist on this in schools until we've investigated it all, until we've discussed it with you, until we've shown you what the case is, and then you either comply or you don't; if you don't, we're going to go to court."

HEW didn't really have the same court procedures and to some extent, went somewhat faster with somewhat more difficulties. This happened some places in the South, but there we really had more experience than they had and when we could find out about it, could bring them into line and show them a little bit more how to do it.

They got into this in Chicago and simply didn't follow that procedure. And I think that's what irritated the President; it certainly irritated me. This should have been discussed in great detail with all the school people and with Mayor Daley, and it simply had not been. And it was simply done much too quickly with much too little preparation. You'll get that reaction, whether it's Chicago or deep in the Black Belt.

It was Burke Marshall's idea, and maybe even more John Doar's, that you always put your cards on the table, and you never did something quickly and suddenly which would get them angry. At the same time you did it.

M: So President Johnson then was able to work out of that Chicago simply by--

K: President Johnson made an effort to try to work it out--but I think he was irritated at the way in which it was done and there had not been sufficient local consultation and work, and I'm not even sure there had been sufficient look at all the facts. It had nothing to do with the results and nothing to do with the desire for integrated schools whether they be North or South. It had something to do really with the means and with the philosophy.

John Doar is a remarkable human being and is one of the most respected men anywhere in the South that there is, and yet he did more to enforce civil rights than any civil servant.

M: He has got a bear by the tail right now in New York. [working to settle school strike, November, 1968]

K: And he has got a bear by the tail in New York right now. But even there it's rather interesting because I think Mayor Lindsay is far more prepared to compromise on this than John Doar, which is an interesting reversal of history because I once said to Lindsay:

"Look, I know what telegram you're going to send me; why do you waste the money? You can just go release it to the press; don't bother to put it in Western Union's pocket."

M: Lindsay has of course had his share of the trouble up there.

K: Now he's on the other side; he's on the receiving end of it.

- M: Why was it necessary to go back a year later for another civil rights bill, in 1965?
- K: Well, we'd never done anything about the--We brought the voting, case by case. It was just an impossible system of law enforcement.
- M: You mean the administration of it--
- K: The administration of it because the courts had been very, very slow on this; people obviously were qualified to vote who were being turned down; then we had to bring a lawsuit; then we had to go through all the appeals and another election would go by. By the time it had taken three years and they were getting into the Court of Appeals, they would then say, "Well the situation is all changed now," and the Court would send it back, remand it for a new look at the facts; and then you'd find the facts were the same and you'd be going up again--it just took forever. And it would take forever in terms of personnel and work and everything else. So, this, coupled with the voting demonstrations and Dr. [Martin Luther] King's march at Selma and all that great public pressure on this and focus on it really required a legislative solution. That was what we came up with and in a sense we had far less problem with it. Of course, that was the Congress after the Johnson-Goldwater election, so we had an easier time on that. And also the record on voting discrimination was so great--
- M: There was no argument here as to need, in other words?
- K: Really it was felt almost all the way round. And of course no Southern Senator or Representative was willing to make the argument flatly that Negroes shouldn't be allowed to vote.
- M: It was simply just not a respectable argument--
- K: It simply was not a respectable argument to make, and none made it.
- M: You didn't encounter the kinds of difficulties in that--
- K: No, they tried constitutional arguments and this, that and the other thing. We had the same difficulties with the liberals wanting more and the conservatives wanting less, and always the concern--you see, both the 1964 and the 1965 Civil Rights Acts, if you're honest about it, were aimed at particular regional problems, although they were cast in

national terms. This always worried some of the Senators, always worried Senator Dirksen, that somehow or other this would be used in a state that he would see as having less problems, although I think we've come to learn there are problems in all states.

M: Well, now that same thing is not so much true, I think, is it, in regard to the most recent Civil Rights Act, the one on open housing--did you get involved in the drafting and management of that one? I think that's since you've been over here [at State].

K: Yes. Well, we got that through the House and then couldn't get cloture on it in the Senate while I was Attorney General.

M: That would be in 1966?

K: In 1966. We couldn't make it.

M: And why did that one turn out differently? Because of this obviously national application that it has?

K: Yes, I think so.

M: Did you then work on it after you had moved over here?

K: I didn't work on it after I had moved over here. It was really quite remarkable to get that thing through the House. We didn't get it through the Senate, but one of the things that I think helped that bill the next year was the fact that many, many Congressmen genuinely felt that they would lose their seats if they voted for open housing.

M: You're talking about Congressmen other than just Southern Congressmen now?

K: Yes. Oh, yes. Suburbia. And they were very resentful of our pushing it as we did in the House prior to the 1966 election, because they felt that they had always voted for civil rights; they believed in open housing; and they thought they would lose the election on it.

M: Which put them in a rather difficult--

K: They were in a very difficult position. They didn't want us to push it. We did push it, we did get it through, they did vote on it, and none of those fellows lost on open housing.

M: Was this a lesson you think they learned?

K: This was a lesson they learned in the House, and I think it had an impact on the Senate--that open housing was not an important issue in the 1966 election, although everybody predicted that it would be.

M: And the law was enacted the following year?

K: And the law was enacted the following year. So I think the fact that we pushed it in 1966 helped, because they tested it out with the public and it really was surprising. While I don't think the public wanted it, or at least a large segment of the public didn't want it, it was always a sub rosa issue and in the campaign, nobody would come out--or very few came out--on it.

M: Again, it's one of these things that's not quite a respectable--

K: It wasn't quite a respectable issue, and so it didn't get into the campaign in very many places.

M: I think you were still at Justice when the whole civil rights enforcement machinery was reorganized--wasn't that the end of 1965 or the beginning of 1966?

K: Yes.

M: When all of the various committees were abolished, some of those chaired by Vice-President Humphrey--did this cause any difficulties between him and President Johnson?

K: I don't think--well, it may have. I don't know the difficulties if there were any. I think Vice-President Humphrey felt, and President Johnson gave him full marks, that he wanted to do things the way President Johnson wanted them done. And I think that President Johnson had no great confidence that interagency committees of that kind were very good ways of making decisions.

M: Having chaired them himself for awhile?

K: Having chaired them himself for awhile. I think also he felt that, to the extent he could centralize control of this in a department that had fair amount of confidence from civil rights groups, and a great deal of experience in how you went about getting results, that he would have more confidence that incidents such as the school incident that

we spoke of in Chicago didn't take place.

M: Is this mainly what it was--simply centralizing the control of it in the Justice Department and abolishing some of these committees that had proliferated over the years?

K: Yes. Although in many respects I didn't feel that really control ought to be centralized in the Justice Department. I was not totally happy with that, because from one department you can't run another department. Even though I agreed with the President's views about the interagency committees, the whole focus of attention was really coming off law enforcement into affirmative programs--your job programs and your HEW programs and all of this. And they were gaining experience on this throughout this period of time. I didn't mind it as a temporary measure, but I felt that it really didn't properly belong in the Department of Justice. Although I defended it, it didn't seem to me it could be more than an interim use of a lot of experience we'd built up.

And also as the problem moved from South to North, we had very little experience with it.

M: Right. You really were regional--

K: We really were regional in the orientation and in the problems. We had very little experience with how you dealt with a problem in Boston or Chicago or New York, and it is very different.

M: You mentioned civil rights groups and their conference in the Justice Department. Do you have any insight into the relations that Mr. Johnson had with either individual civil rights leaders or groups?

K: I think he had a very good relationship with them throughout. Really all of the leaders, even moving fairly far to the left in terms of leadership, did have confidence.

M: Where does that stop--moving very far to the left?

K: Well, I would have included in this, at least for a good part of the time if not all the way, people like Floyd McKissick or Jim Foreman.

M: Some of their critical remarks were made for their own supporters, I'm quite certain.

- K: Oh, yes, and it had to be done. This was understood. I think the President understood this; he has spent his life in politics, and they understood it. And they'd often say it. "I'm going to have to walk out of here, Mr. President, and I'm going to have to be critical. While we appreciate what has been done, we don't think this goes far enough. And I've got to say that and that doesn't really hurt you."
- M: Which is true.
- K: And basically it is true. But they all had confidence. Now if you get off into the nuttier groups, you don't really want their help anyhow.
- M: Nor need it?
- K: Nor need it. It doesn't help you in a legislative way. And also you have to remember that as you got those fringe groups operating and as the problem moved north, some of the more responsible leaders had to move in this direction or they wouldn't be leading anybody. We've had this problem, we're going to have it for awhile.
- M: No doubt. Into a little bit different area, it was widely publicized while Mr. Johnson was Vice-President that he had been given, probably not this simply, but what amounted to a veto on judicial patronage for Texas. Did this ever occasion any difficulties for the Justice Department, particularly vis a vis the difficulties between Mr. Johnson and Senator [Ralph] Yarborough? [D-Tex.]
- K: Yes.
- M: Yes. Any more details than that?
- K: Well, it wasn't always easy to work these out, because Senator Yarborough really didn't think that the Vice-President ought to have any voice in this, and he didn't like it.
- M: Well, traditionally, I suppose Senator Yarborough had precedent on his side.
- K: I think that's right. And so each thing had to be worked out. The only way you ever could get it was as a package, and get it through delays. And you had to diddle around some.
- M: Each appointment became a matter of personal settlement?

- K: Basically I stayed out of most of those and poor Ramsey Clark had to bridge most of that gap.
- M: But it was just a matter of negotiating--
- K: It was a matter of negotiating in a situation where Yarborough just basically resented--did not think that the Vice-President was entitled to any patronage.
- M: Which a Senator might have felt even given no tension between Mr. Yarborough and Mr. Johnson, I would think.
- K: I think that's right. To be perfectly honest I'm not at all sure that if their positions had been reversed, that Senator Johnson would not have been taking the same position with Vice-President Yarborough.
- M: I suspect he probably would have, as a matter of fact. You mentioned that both Presidents Kennedy and Johnson tried to keep any political consideration out of the Justice Department cases at all. More or less for the record, this does apply to the celebrated Bobby Baker Case?
- K: I never discussed that case from beginning to end with President Johnson or with anybody else in the White House.
- M: That case was there in the Justice Department, I guess, before you became Acting Attorney General, was it not?
- K: Yes, it was.
- M: No special handling of the case by the Justice Department for any reason then?
- K: Well, they had some special handling in a sense that we assigned to the case some experienced people and people that I had confidence would be aggressive and fair at the same time.
- M: It would be easy to go the other way.
- K: And it seemed to me that--I never knew whether or not there was going to be a case. It seemed to me that if there was not a case it was important that you had put attorneys in charge of this case in which the public would have confidence that they had no political connections, that they were experienced, and that they were aggressive, so there would be no political charge that you killed it. On the other hand, I wanted people on the case who were not going

to make a case just for the publicity of making a case against Bobby Baker. And I think that's the way it came out.

Unless you do treat cases specially if they have political--if they're going to be all over the press, you want to be sure that you've got good people in charge of those cases and that when you put in your evidence it's going to be there and you're going to get a conviction. You don't always succeed.

We charged the Republican ex-Governor of Illinois with income tax evasion, what we regarded as a strong case and we lost it to a jury. Senator Dirksen testified for the defense in that case.

M: I imagine he makes a pretty good witness.

K: And I spoke to him afterwards. I said "I hope you don't think that we brought this case for political reasons, Senator. We had what we thought was a very strong case."

And he said, "Oh, Nick, you bet it was."

M: You almost sound like him. Is the same true of the Hoffa case, for example? In Robert Kennedy's time he was charged frequently with a vendetta of some kind against Hoffa.

K: Yes.

M: Again, you think the same type--

K: It is certainly hard to--terribly difficult for the Department of Justice to meet those charges. We had an awful lot of evidence as to what Hoffa was doing. A great deal of investigation was done on this, and we had a great deal of evidence. And in fact it resulted in conviction. That more resources were put into the conviction of Jimmy Hoffa than would have been put into the conviction of Joe Jones, I have no question. Hoffa was a very powerful man and Mr. Kennedy felt, with some reason, that he would stop at nothing in terms of corrupting the processes of justice, intimidation of witnesses, perjury, all of this. And he felt that it was very important that a person exercising great power, which the head of the Teamster's Union exercises, should be brought to justice. Now, you get accused of a vendetta on this. I don't know how you avoid the charge if you start from the premise that it's important, that this man is doing these things and that he

be prosecuted for them.

M: Or how you defend yourself once the charge is made?

K: And if he goes ahead and keeps committing crimes, then you charge him with them, and he says "See, that proves it's a vendetta."

And I never saw an answer to it. There was nothing personal in this. Bob Kennedy, despite a lot of rumor otherwise, was not a vindictive person. As a small instance, even though it would have made our case easier, he refused to charge Mrs. Hoffa. He said, "She's not really responsible--she just did what her husband told her to do." And even though it would have made our introduction of evidence easier, he wouldn't name her as a defendant. And when Hoffa was convicted in the first case, his [Kennedy's] attitude was not one of triumph or cheers or anything else.

M: Isn't this the case that electronics surveillance devices became a public issue? That was very confused in the public prints. What were the respective positions of the Justice Department and Mr. Kennedy and Mr. Hoover, for example, regarding the use of these devices?

K: Well, these were big problems and one that I don't think that I handled particularly well there, nor for that matter did Attorney General Kennedy. The practice was that the Attorney General approved wiretaps, and wiretaps were confined to national security cases and not used in other cases; and each one was personally approved by the Attorney General. The practice that had grown up in the past, and it has never been clear to me that it was even understood by Mr. Kennedy's predecessors, from the start of the organized crime program electronic devices had been used to gain what the bureau called intelligence information.

M: By the FBI?

K: By the FBI. In an area where the law was somewhat unclear, I think, in fairness. These never were approved specifically case by case as were the wiretap ones. The directive which covered these, or which the bureau always stated covered these, uses some slightly ambiguous language. There was one that came out prior to 1958, I think,--

M: That far back?

K: Yes, 1957 or 1958. I've talked since with Mr. [Herbert]

Brownell and Mr. [William P.] Rogers, [ex-Attorneys General] but I don't think they understood that in the same way that the FBI understood it, or even understood what was going on.

This then came up with Mr. Kennedy. Mr. Kennedy always said, and I believed him, that he had no knowledge of the existence of these. Mr. Hoover always said that Mr. Kennedy did have knowledge of these. And I always took the view that Mr. Hoover thought that Mr. Kennedy had knowledge of these and approved it, and in fact Mr. Kennedy did not.

M: Which is entirely possible.

K: Which I believed. I had no knowledge of them as Deputy Attorney General. Now there was a lot of reason to believe that Bob Kennedy knew about them, and yet he was a very honest man on this kind of thing, he never told lies. And he felt intensely about this--that he did not know about them. The evidence that the bureau has that he knew about them are his initials on a piece of paper on one occasion that there's at least a line which, if anybody knew anything about electronic surveillance, would have told him that this was going on. Whether Bob Kennedy ever read the piece of paper carefully, I don't think it was pointed out to him by Courtney Evans, who was his liaison with the bureau, that that was what he was doing. I think he thought it was a wiretap proposition despite the language of it; the language of it was not clear.

M: An electronic surveillance, the machinery--

K: It spoke about electronic surveillance, but if you were not aware of bugging and on two or three other occasions Kennedy listened to transcribed conversations in the organized crime field, which could only have been gotten by bugging, which he says he thought he was listening to bugging that had been done by local police, not by the FBI. Which I find a perfectly credible explanation.

But he never asked any questions about it, and Mr. Hoover never volunteered any information about it.

M: So the misunderstanding continued.

K: So the misunderstanding continued. The law shifted to some extent in the course of this. The information as it was fed into the system--well, I ought to add on to this that there were people working on organized crime that really had no doubt that this was going on, but who thought that the

Attorney General knew about it, never raised it with him, and just assumed that this must have been something that he had discussed with Mr. Hoover.

Well, it all sort of began coming to light and I was initially faced with the problem before President Johnson cut it all off and what I don't think I handled well. Suddenly faced with the problem of Mr. Hoover and his associates feeling that this was essential, if an organized crime program was to continue, and with a whole bunch of devices already existing to the extent that your cases had already been spoiled, that they had been tainted, I worked out an arrangement with Mr. Hoover that I had to see each one--but they were all going to be terminated. This is an example of where it's difficult to be Acting Attorney General.

M: And this was while you were Acting Attorney General?

K: Yes. And after I became Attorney General in February, and then it wasn't perhaps the first thing that I did but then within the first three or four months I really got concerned about it, raised it, and the President ordered all of the terminate--But I had let it go on in this period when I was Acting Attorney General because I felt this was something that an Attorney General was going to have to decide, and I didn't want to prejudice a new one, and also it was an issue of great emotion.

M: Between Justice and the FBI--

K: Between the Justice and the FBI people, and it was a period that I was trying to get the confidence of the FBI because relations had never been good between Kennedy and Hoover. And I was trying to see if there was some way in which these relations could be made better with me.

M: Were they?

K: They were for awhile; I think they really were better. But this is the price I paid for it, and I think I paid too big a price for it.

M: In looking backward--

K: Yes. But there was very nearly a threat on the part of the FBI to stop organized crime investigations if they couldn't have this technique.

- M: It got down to that?
- K: They said without this your whole program will collapse.
- M: Is this the period in which you got into this public misunderstanding with Hoover which made the papers several times when he said things were one way and you--
- K: No, this was really subsequent to that when he was doing it with respect to Kennedy, and I succeeded in getting both Hoover and Kennedy mad at me.
- M: That's what happens to the man in the middle.
- K: By my statement which I honestly believed to have been true, I said Mr. Kennedy did not know about it but Mr. Hoover thought he did.
- M: So both of them in effect were right.
- K: And I thought you couldn't sit calling one or the other a liar, which is the way they tended to do with each other.
- M: If you like, why don't we talk briefly about the communications satellite program and then break off for today, and I'll have my secretary arrange a rematch here when it's convenient.
- K: All right. I don't know what kind of questions you have on it. I did have some responsibilities at the outset of that with President Kennedy. I had relatively little after--
- M: Oh, you're not the man who suggested the compromise that ultimately led to the sort of half and half corporation?
- K: Oh, yes, I did do that. That legislation was in 1961.
- Comsat got through in 1961, either 1961 or very early 1962, because it was while I was Assistant Attorney General that that got through.
- M: You are the one who suggested the mixed corporation that ultimately came about?
- K: Yes.
- M: How has that worked out?
- K: I think it has worked out fairly well. I followed it for

awhile. This was an interesting story with Bob Kerr on this. Because I went down to testify for the legislation that the President--President Kennedy--put in. And I spent all day before Bob Kerr, fighting him. He was a witty and able and capable man--very powerful; and he had me down there about five hours on testimony or longer. I didn't get through until about 5 o'clock in the afternoon. We had proposed a simply public corporation chartered by Congress--

M: This was the original legislative program?

K: Yes. And the FCC and Senator Kerr and others were backing a carriers' company with all the stock owned by the carriers, and I was fighting that. We had been into this with President Kennedy before, and I felt very strongly that he shouldn't let this go by default; that this was a matter on which the President ought to have a program and not leave it to Newt Minnow and the FCC. He'd made a lot about communications satellites in his speeches; he ought to have some interest in what the legislation was, and he'd agreed with that. We had come up with this device of a publicly owned corporation but with three presidential appointees on the board.

Then we went down and testified before Bob Kerr and that evening about 5:30 or 6:00--I'd just gotten back to my office--President Kennedy called me and said "Can you have lunch with Bob Kerr tomorrow?"

I said, "Well, I can have lunch with him but I doubt he wants to have lunch with me; he has been kicking me around all day."

President Kennedy said, "Not at all." He said, "you were the first government witness that knew what he was talking about, and he wants to have lunch with you."

So I went down and I had lunch with Bob Kerr; he said, "All right, I'll compromise it." And we talked for about an hour and a half with him and Senator Symington--and came out with this half owned by the carriers, half by the public and the joint board, and he accepted the presidential appointees on it, and that's what we got through the Congress.

I then followed it through President Kennedy and after President Kennedy's death with President Johnson for awhile to make sure that in the international arena, and as they got into this, that it worked. We didn't want to have sweated this through Congress and then find that we had

something that didn't work. Then I really stopped following it in 1964.

M: The way the law passed, does it still provide, you think, for effective public control of a corporation through the presidential appointees?

K: I think at least the President can be sure that he's informed on this, and I think it has some public input.

M: This is one of those things that the liberals got very unhappy about--

K: Yes, and there's something to be said on their side of it. I think if I'd had my druthers, I'd have said, "make it a government corporation."

M: Well that's how, of course, you started it out.

K: Well, we just said--made it a public corporation. But the notion, the Kefauver idea, let's have a TVA, didn't have ten votes. And you couldn't have gotten it. It was an absolute loser as far as the Congress was concerned; you couldn't have possibly gotten it through. And that persuaded me that you didn't have to be all virtue on this. And furthermore it wouldn't have worked if you'd gotten it through, because you'd have gotten no cooperation from the carriers. Even on the publicly owned corporation, the persuasive point that Bob Kerr made to me at lunch was "You've got to get the carriers' money into this, because they have to make it work and with their opposition you can't do it. And so make them put up half the money; then they've got a vested interest in making it work."

M: That's kind of the old Alexander Hamilton idea about our whole government, isn't it?

K: That's right. And I think he was right.

M: It has turned out that way certainly.

K: Of course, we have a lot of other points of control over it in point of fact. Not only with the commission but also so much of this is international that there are things they simply can't do without governmental support abroad, so you have a good many inputs into controlling this in addition to some directors.

M: This can open up a long discussion, I guess. You're pretty

well on record in regard to the so-called law and order issue--your recent article in Look Magazine, [Oct. 29, 1968] for example, I think, lays out pretty well your philosophic considerations regarding the issue, anyway. How real is this issue as opposed to the political nature of it?

K: There's a real law and order problem and a real need to strengthen law enforcement, the judicial system, the penal system, in the states--some in the federal government, but that's manageable. But there's a real, real need to do this within the States on a very long-neglected, terribly badly-organized, backward thing that nobody has supported. And they have all kinds of problems and this is why the federal government has to get into it at least in a grant basis. People in the suburbs just won't pay taxes for central city law enforcement any more than they'll pay it for central city education. With the tax structure that the States and municipalities and counties and so forth have, it's a hopeless problem without finding some new source of revenue and some new devices of cooperation and so forth; and at the moment this really means federal funds--federal funds at least as an incentive to getting more state and local funds involved in it, better training, all of these things which are real. Now as far as the Supreme Court issues are concerned, to be perfectly honest, I disagree with some of the Supreme Court decisions, although I have never publicly said so. But it doesn't have anything--it makes the job of the police harder and this is a psychological difficulty for them when they're getting a lot of pressure on them anyhow and so they tend to react to this and understandably. I just think that there has been a little bit of "ivory tower" attitude on the part of the Court on some of these, although they've had their good reasons for doing it. It's not an open and shut issue.

That has nothing to do really with the growth of crime or with the only real ways of crime control that you can effectuate, because those Supreme Court decisions, except for the fact that it irritates the police and has some psychological problems for them, they don't have anything to do with crime.

Now I think the legislators, both in the Congress and the States, have gone after the Supreme Court because it doesn't cost anything. The others just cost a lot of money and they're going to cost a lot of time.

M: And a lot of administrative labor. Do you think the local law enforcement agencies are prepared to cooperate with the

federal government to the extent necessary?

K: Yes, most of them are. Most of them are. We did this on a pilot basis when I was Attorney General--we had a small amount of funds for it, made some mistakes but used them experimentally and gosh, we had real cooperation from the police on this and a terribly close working relationship. Some of the programs, although I don't think they would appear to the general public to have much to do with this, had a great deal to do with, I think, some things. We got one small program and it was at the Harvard Business School, management techniques--

M: The public is not going to like that, right away.

K: Not going to like that. We invited 50 police chiefs from the 50 largest cities to attend. They had to give up their vacation to do it. 48 of them attended and it had a tremendous impact. No police chief ever had any training in managerial techniques, how to organize, and they found this the most--they said--many of them told me and wrote that this was the most exciting experience in their life, and that they really had some ideas they could now go back with.

M: So it's not local intransigence, they're ready to go?

K: They're ready to do it and many other things they've fought for for years. At least we could give them some support on--use of computers in determining crime areas and patrolling techniques. Because you're not going to control crime in this country by getting more convictions. You could get a faster court process and better court process; you can do better in the penal system and all of that, but you're not going to build your percentage of solved crimes and convictions very substantially by anything you do. And if you cannot hope to solve more than 25% of the crimes with convictions in a lesser percentage, because many times you have the same fellow committing three or four crimes and he'll confess to the other so your conviction is less than 25% of the time, plus the difficulties of conviction.

If your crime rate keeps going up and your conviction rate stays at an even percentage of that, you're going to have more and more crime and more and more unsolved crimes. I don't think anything can be done at that end. Now the only thing you can do is to try to deter crime, and this you can do effectively--

M: Through the police forces?

K: Through the police forces; through these other devices that you can use; through cutting down the opportunities. I mean--automobile thefts in this country, over 50% of the automobiles stolen are stolen with the keys in them. Many of these come out of parking yards; we don't put any responsibility on the parking lot operator to do anything about this. They leave the keys in, or they'll close up for the night and leave them on the floor. The kids know this, they come in and steal the car.

We don't put any responsibility on the person whose car is stolen. We have a few states that have laws on this; but we never enforce them, we never make them pay a penalty to get it back.

M: Something just doesn't seem quite right about penalizing the victim there.

K: Well, I suppose this is true, but take businessmen downtown. Locks on doors, alarm systems, it's hard to get people to do this. You know if you go into permit motor banking, for example, that you're going to increase the number of bank robberies. Now cutting down the opportunities for crime by making it more difficult is one way of cutting down the crime figure. If you keep making it easier, then your crime figures go up. Then you can get into the patrolling, and gosh, it has been proved in city after city if police cars are visible and patrolling, this will cut down the number of crimes. I've forgotten the statistics, but I guess one policeman will probably in the course of every twenty-three years he serves come across a commission of crime in the act. So there's not many times you're going to be right there to make an arrest.

M: Right. The movie stereotype of criminals surprised in the act just doesn't happen--

K: Very rarely happens. But if you're there, the crime may not be committed. That's the way in which you're going to cut down on crimes; and, I think by speeding up the court process so that you do create a deterrent and fairly rapid conviction rather than sitting around for two years, and I must say a judge feels a little silly trying a crime that's been committed a year or two years ago. And if the fellow has behaved himself in the interval it's harder to get a conviction and it's then usually a suspended sentence. And if you move more swiftly on that, I think it would help to deter.

M: These things you're giving me, I suppose, are the results of your studies on the National Crime Commission?

K: On the crime commission.

M: What was President Johnson's relation to that?

K: Well, he was interested in the work. It was an idea that I put to him that we ought to have this, that we really ought to make a serious study of it. I thought it would become more and more of an issue--

M: Crime, you mean?

K: Crime would become more of an issue, and we really ought to see what we knew about it. I take great pride in that report, and I think a fantastic job was done by members of the commission and by the staff. I think you'd find there are very few law enforcement people anywhere in the country who haven't read and studied and agreed with that.

M: This was made in early 1967--your final report?

K: The final report came in early 1967. It's sophisticated, complicated stuff that is difficult to get over to the American public, particularly difficult to get over if it becomes a political issue.

M: Were the suggestions that your commission made pretty much the basis for what's called "The Safe Streets Act?"

K: Yes, they were, and most of them were actually accepted by the Congress except for this long delay over the wiretapping; and then the Miranda Case issues that came up with Senator [John] McClellan [D-Ark]. So that there was a year and a half getting it enacted.

There wasn't really any disagreement about the other recommendations. President Johnson had strong feelings about wiretapping. I always thought he was wrong.

M: Over his strong feelings--

K: He didn't want any of it, and I had always taken the view that under proper court controls you ought to have it. I took that less because I believed it was particularly significant than I thought that was the only thing you could get through Congress. I didn't think Congress was prepared to abolish wiretapping--

M: What did the final law do?

K: The final law permits it under controls.

M: Was there any disagreement in the Executive Branch regarding that approach--the approach recommended by the Crime Commission--

K: Oh, I think there was some--not much. I think Ramsey Clark disagreed with me on it. I think he was inclined to agree with the President on it. I really felt then and feel now that I was right; it was more a political judgment than it really is a law enforcement judgment. I don't think the wiretaps helped that much, but some of the police feel they helped that much and I felt it was political there as well, but I wanted to keep the confidence that we were building up among the police chiefs that this was their administration. And I think we lost a lot of that by the abolition of wiretapping.

M: Then there's really, you think, more of the same in the approach that's likely to succeed in the future--in other words, more funds for--

K: It's going to take more money, yes.

M: Law enforcement grants on a local level--

K: And it will not succeed for a number of years. I will guarantee that crime under Mr. Nixon will go up at just about the same rate it has been going up the last four years.

M: In other words, you can look forward to law and order in 1972--

K: I guarantee that Mr. Nixon will not be talking law and order in 1972.

End of Tape 1 of 1 and Interview I