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LAWRENCE F. O'BRIEN ORAL HISTORY, INTERVIEW XIII

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Signed by Lawrence F. O'Brien on April 5, 1990.

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ACCESSION NUMBER 92-24

INTERVIEW XIII

DATE: September 10, 1986

INTERVIEWEE: LAWRENCE F. O'BRIEN

INTERVIEWER: Michael L. Gillette

PLACE: Mr. O'Brien's office, New York City

Tape 1 of 2, Side 1

G: Well, let's start today with the Water Quality Act, an effort to establish quality standards for interstate waterways. Do you recall the origin of this bill and particularly LBJ's attitude toward it?

O: This was a fit in the overall Great Society program. We've talked about highway beautification. You're talking about clean air, pure water, the problems of neglect over decades in these areas and the failure at the federal level to seriously tackle these problems.

Ed Muskie in both the Clean Air, I believe, and the Water Quality Act played a very significant role. At one stage I went to Maine to visit with Muskie when the Congress was in recess to talk to him on these subjects. On the Senate side, my recollection is a considerable dependence upon Muskie to provide leadership in these areas.

G: Because he was more knowledgeable or more active?

O: He had a great interest. He was very knowledgeable on the subject. The LBJ commitment in this area was strong, and he had a great personal interest. But that was true of other major legislative battles that occurred.

G: Johnson, when he signed the bill, made the statement that you would be able to swim in the Potomac by 1975.

O: Yes, I recall that statement. I guess as we sit here that hasn't been fulfilled.

G: Do you think that the visible pollution of the Potomac was a motivating factor?

O: Oh, yes. That was referred to often as an outstanding example of the seriousness of this problem nationwide. That probably was the reason that Johnson made specific reference to the Potomac, because the Potomac was in a sad, sorry state at that time. I don't know the state of the Potomac today, but I do remember when I used to take the members out in the *Sequoia* you'd have to hold your nose at times.

G: Did you find that this was an easy issue to sell the members of Congress because they did

have that firsthand familiarity with it?

O: Well, there again, you got into cost factors, administrative aspects. The concept was a little hard to be opposed to: clear water and clean air. But, nevertheless, nothing is ever easy. It ultimately came out reasonably well. But I would not want to suggest that because you were with motherhood and apple pie supposedly in a proposal of this nature that it was that simple.

G: Had Jack Kennedy had a similar interest in this sort of legislation?

O: Yes, but I don't recall that we got deeply involved. There were several matters that obviously needed attention. For example, truth-in-lending, truth-in-advertising, the Paul Douglas role in those days, clean air, water quality. It was our conviction through the New Frontier-Great Society period that what was needed was dramatic and drastic action in these areas. It fitted perfectly into our concept of the federal role.

G: One of the controversial aspects of this bill was the discretionary authority given to the secretary of HEW in determining the standards. And here the House version differed from the Senate version, the latter being the one that I guess was ultimately adopted.

O: Well, that was typical of some of the debate and discussion. It really didn't get to, "Shouldn't we do something about cleaning up the air and assuring pure water?" That wasn't it. It was "Who's going to run the show; what kind of expenditures ultimately will be involved; where does the authority lie; what are the penalty provisions; is there going to be congressional oversight?" and all that sort of thing. That was really what the debate and discussion were about in the final analysis. Except for the usual hard core, it wasn't a matter of saying "No, we shouldn't legislate in these areas, we don't belong there, it isn't our province." It was with some reluctance, obviously, on the part of the Republicans, but nevertheless [there was] an understanding that it was darn hard to oppose legislation of this nature. You had to get to the nit-picking.

G: Yes. Another question was the timetable for implementation: how long before the standards should be established.

O: There again it's a part of what I just referred to. If you're not enamored with a legislative proposal and yet politically speaking the concept is really not debatable, then the tendency is to go heavy into the other elements. The timetable would be administrative authority, what penalties and the timetable. Those who were opposed to a federal role would try to extend timetables, weaken elements of the proposal.

G: The Clean Air Act was another piece of legislation enacted that gave discretionary authority to the secretary of health, education and welfare. This was a bill aimed at limiting the auto emissions, pollution--

O: Yes. Well, there again, Muskie played a key role. Muskie was chairman of the

subcommittee that would be handling this in the Senate. Now you're dealing with the auto industry, and it's one thing to purify the water and another thing to be in favor of clean air. This is going to impose, potentially at least, some severe restrictions on the manufacture of automobiles--rules and procedures that would have to be adhered to. Up to this time, there hadn't been any major effort to impose rules and procedures on the auto industry, which is contributing tremendously to the problem of our air. Now you're getting into big lobbying, a powerful group with supporters in the Congress.

In situations like that it's always interesting. There might be a liberal congressman from Michigan, and you find that fellow isn't sold on this proposal. You understand the reason why. So on a regional and local basis, you would have fallout in support. Actually the controversy goes on to this day in that area. There have been steps backward; there have been lessening of restrictions, there have been extensions of time frames. The auto industry to this day fights this battle.

G: What role did the auto makers play in this battle, do you recall?

O: In general, the position of the auto makers was that they had and would be making every effort to improve the situation and lessen the problem on a voluntary basis. The auto industry doesn't feel that the government should jump on its back, because the auto industry commits to the American people to continue this effort in this area if they were allowed to go about their business and do it. That's the position of every group when you are trying to whip them into line.

G: A senator like [William] Proxmire would have both an environmental faction in his state and an automotive faction.

O: That's right.

G: How would he resolve them?

O: I don't know how he would, but it would cause him some problems. He'd have to give it a lot of thought, because there's a major element of auto manufacturing in Wisconsin. He would undoubtedly be greatly interested in the retention of employees in the industry in Wisconsin. At the same time his gut reaction would be that he was personally favorable to doing something significant about this problem, so he would have to resolve that in his own mind.

G: Did the United Auto Workers take a stand on this?

O: I don't recall, specifically, to be honest with you. I don't recall the auto workers' stand. Did they support it? I'd be unfair to say they didn't; I don't recall how significant their role was.

G: Was there anything that you could do to counter this pressure from the auto makers?

- O: We were in pretty good shape in that regard. It was a tough sell on the part of the auto makers, pretty tough to sell anybody with a reasonably open mind that we should refrain from taking this major step in the public interest. They were in a difficult position from the outset and that's why they had to make all the verbal commitments they would devote time and attention to this problem in terms of improving their product. And the record showed that there was no indication of any significant improvement over a period of time as they were indicating was the case. We felt it was not in the public interest to allow the auto industry to just go on at whatever pace they wanted to set. On the basis of past practices, current record, and the seriousness of the situation, it was indeed a significant area for governmental involvement. It was clearly in the public interest. So the manufacturers were not in a very good position to be selling their bill of goods. They had some buyers, but the buyers were people who were sympathetic to them or closely associated with them.
- G: Were there segments of American industry that supported the measure, such as those that were involved in making catalytic converters or this sort of thing?
- O: Oh, I don't recall any great rush of support from those areas.
- G: You don't think that was a critical element in--?
- O: We had a good case and a good cause. Those in opposition were not in a very good position to be against the concept, and those who favored the concept were obviously in a comfortable position. The private sector areas that would be affected by this had--we were confident that the public was not buying their hue and cry about federal imposition. The proposal itself flew on its own.
- G: Did the fact that California had already established some emission requirements have an impact on this--?
- O: It did some. I wouldn't suggest that that was overriding, but it was something that the proponents pointed to, that there was a state-level breakthrough already established. There were those who suggested that "Well, why don't you leave it with the states? That's where it belongs, not the federal government." So they tried to counter it by pointing to California legislation as an example of how this should be done at a state level. When you get to clean air and water you're having a little difficulty adhering to state lines.
- G: Well, even the manufacturers must have been leery of a state-by-state requirement that varied. If they'd have to manufacture fifty different versions--
- O: Oh, sure. But at the federal level, there was the record of involvement in the public interest in this area because of deep concerns. There again, the thrust of our effort was to get the best bill possible, the cleanest bill possible, the tightest time frame. And those were the areas of negotiation. Whether legislation would be enacted was not what was at

stake. But [the question was] how closely would it come to the best approach and most timely approach. The whole debate wound up in terms of who's going to run the show; what's the role of the Congress.

G: Okay, there was a significant piece of housing legislation, the Housing and Urban Development Act--

O: It was significant certainly in its scope. It was the most significant housing legislation by far of a couple of decades.

G: Yes, since the 1949 bill.

O: This was massive in concept and proposal.

G: In spite of the tremendous majority that you had in both houses, this was still a fairly close vote, [or] series of close votes.

O: Yes. This was very controversial.

G: Let me ask you to discuss the background of this legislation.

O: Back again to what we were discussing: what is the appropriate involvement at the federal level in this area just as in many other areas? You get to a philosophy of government. Lyndon Johnson's view was that this is a tremendous responsibility at the federal level and a great challenge. His view of it was broad and deep. And it shook the conservative establishment, because the elements of the proposal were so far-reaching, and it was very controversial. The standards, the eligibility, were very intricate, very, very difficult. If you think back on it now, it's rather awesome.

G: Yes. The rent supplement provision was perhaps the most controversial.

O: Yes, it was. It was a difficult area. The implementation and administration down the road was going to be a very difficult task, and guidelines and procedures should be as carefully developed and spelled out. Rent supplement you can underscore as an example of the intricacies and difficulties of this legislation.

G: The Republican effort to kill the rent supplement section was defeated in the House by a vote of 202 to 208 on a roll call. That was a very narrow victory for you guys.

O: It sure was.

G: Do you recall the details of that?

O: That was a real sweat. I remember that aspect of it vividly, because here you have this omnibus bill and you finally focus on the most controversial aspect of it in rent

supplement. I do remember we had as intensive a head count as possible. We held our breath and it was probably the closest roll call we had in a long time on any matter. We'd had our problems in a lot of the legislation, but when you finally got to the floor of the House, we had reached the point in 1965 where we generally were in pretty darn good shape. It wasn't like in 1961 and 1962, or indeed 1963 and 1964, but this one was a barn-burner.

G: Who were the key players in that?

O: The Republicans, first of all, were just almost totally in opposition. Secondly, it brought into play again the old coalition. There were racial elements in this, and I think it is reflected in that roll call. While you were not specifically recording yourself in that context, I think a lot of the concern about rent supplement went to concern about who was going to be the beneficiary of it and how far was the government going to go. That roll call reflected in a sense that this is a tremendous expenditure of taxpayers' money. Are we prepared to be that financially supportive or should we? This was not a matter of who's going to run the show. This was very basic and fundamental, and it sort of revived some of the old specters. Although that didn't surface in debate as such, it was there and it caused us a great deal of difficulty in winning that roll call.

G: Was this an urban-oriented bill rather than a rural--?

O: It was considered that by a lot of people on the Hill. I think, more than that, some of them saw it as implementing civil rights legislation.

G: Yes. I notice that it was introduced by [John] Sparkman in the Senate.

O: Yes.

G: What was Wright Patman's role in this in the House? Do you recall?

O: Well, he played a significant role. He wound up presenting the clean bill in the House, and he was very much aboard on it.

Incidentally, before we leave Sparkman, I think if you go back over Sparkman's legislative record, you will find that in terms of the state he represented, he was even more than a moderate. I think there were indications of that in his legislative record, so it would not be a change in his general approach to be supportive in this area.

This was sort of up Patman's alley in a way. If Wright latched onto a cause, he would be very active, very much in the forefront. That was his nature. I know some of his fellow Texans were not that admiring of him at times, but he was quite a guy in his own way. I had a lot of involvement with him over the years.

G: One provision that was deleted was the administration's proposal to assist in the

development of new towns.

O: Yes. Well, if you can envision this massive bill, the new town concept was probably the most esoteric in concept of the entire proposal. This stretched out as far as you could get the bill, really. It's one thing to provide housing, but now you get to a whole new town concept. Ultimately these new towns were built through private enterprise. That was, in the minds of some of the fellows on the Hill, way out, "How far out do you go on this? How many waves do you want to make?"

G: Did you have spirited opposition from the lenders, the savings and loans, or the apartment owners association?

O: Oh, yes, there was opposition from all those quarters. This was a little reminiscent of some of the arguments that were presented on Medicare, i.e., this was so revolutionary that it bordered on socialism or worse. It was a totally uncalled for federal involvement in the private sector to a degree that was destructive. Of course, those arguments were motivated by their own special interests. The fact is that they persuaded themselves; they got pretty excited.

I don't know whether I describe it properly or not--but it is considerably different than clean water and air. This got to the human element. It had pieces of action in it that it could be detrimental to lenders or to banks or to builders. As they saw it, it went a long way toward financially supporting individuals and families. So it was adverse to some of the special interest groups, very much so. It was very disturbing to most of the conservatives. It did break up any concept of bipartisanship. You know, that wasn't there. It excited people on behalf of the legislation, obviously, but it also excited people who felt this was the beginning of the end. My God, civil rights, Medicare, education legislation, highway beautification, now what else is there? Now you get to this point, rent supplements, new towns, this was revolutionary, and it disturbed a lot of people on the Hill and in the private sector.

If you're saying, and rightly so, that this was the first major proposal in this area since 1949, you have to ask yourself why. Well, "why" went, to a considerable extent, to Lyndon Johnson's advocacy. So when you talk about Great Society breakthroughs, you'd have to put this legislation right up there near the top.

G: Yes. Anything on LBJ's assessment of the measure when it passed or--?

O: Well, LBJ's assessment of all measures when they passed was you could have a couple of sentences missing, or a couple of commas or crossing of t's, LBJ was never totally satisfied. That was his nature. [He wasn't satisfied] unless it was absolute perfection itself, not one element of it altered in any way. But he would get past that quickly and look at the big picture and the overall result. My recollection was that he was extremely pleased in this instance.

G: What disappointed him about the bill, though?

O: Nothing overriding.

G: Really?

O: No. But, as I say, he could reasonably enjoy the moment, but there were times when even while he was enjoying the moment, he would reflect back on somebody who opposed or somebody who became difficult to deal with or some change that watered it down somewhat. The fact is that once you got by the House vote and you got this enacted, you had really accomplished a great deal, a great deal. It was something to be really proud of, and he was.

G: You also had the creation of the Department of Housing and Urban Development.

O: Well, that all followed the pattern that had been established back at the time of Kennedy when the word was that [Robert] Weaver would be the first black member of the President's cabinet. That surrounded the enactment. As this dragged on--and it dig drag on--the black leaders became concerned as to whether or not Weaver indeed would be named if the department was created. And there were some comments made by black leaders that we thought were counterproductive, because it was just stirring up a pot. And I recall, also, some black leaders publicly stated that they in no way were trying to influence Johnson. But there were constant references to a Kennedy commitment that should be fulfilled by Johnson. There had not been a specific Kennedy commitment, but they thought [there had been] an understanding. There was some delay in the ultimate appointment, as I recall.

G: Was this simply a calculated delay so that it wouldn't appear that Weaver had already been essentially designated?

O: Well, I think there was some delay in the sense that the President did not want the record to indicate that he had been pressured into something. I think it was more a reaction to some of the comments of black leaders. If you find comments in newspapers to the effect that "He owes it to us," or "This was committed," I think your tendency is to say, "Wait a minute, I'm not going to make an announcement today or next week that would be construed as bowing to pressure. What's the hurry? I'll get around to this in due course, and I'm thinking about--"

G: Yes.

O: I don't recall there was a time when, at least as far as any contact I had with him on the subject, he was contemplating not naming Weaver. And I didn't blame him a bit, as I recall the circumstances, this is still a presidential decision; he is the president. There's no indication that this decision had been made early on. It couldn't have been; there was no department. Whatever Kennedy might have indicated or not indicated, he wasn't around

to testify to it. And I think the President rightly could resent anybody making some claim that he had no alternative. And I think the black leaders recognized that. Some who had made comments made an effort to withdraw from public discussion to the point of saying, "This is the President's decision and we're not attempting to influence it."

G: Did you yourself get involved in negotiating with the black leaders who were making statements?

O: No. I don't recall being involved in any in-depth discussions regarding Weaver. I was assured in my own mind that that was the way this was going to play out. The Congress was pretty sure that was the way it was going to play out, and that was what concerned members up there in enacting the proposal. Weaver was in the government; he was playing a role, the prepping of Weaver for the position had really already taken place. You could justify the appointment clearly on the basis of experience and background.

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G: Was there opposition to the measure based on the fact that Weaver was the logical choice?

O: Oh, sure.

G: Let me ask you to describe [that].

O: It wasn't articulated in those terms. In the background was the feeling that if the department wasn't created, at least you would have postponed the probable inevitability of a black member of the cabinet. And there were still people on the Hill at that time--maybe still are, I don't know--who felt strongly about this and were bitter about the progress of the Great Society programs in the area of civil rights.

G: Well, how did this--?

O: Weaver was a darn good candidate if you were considering recognizing the black community at this level. He was not a civil rights leader as such. He was, as I recall, an academician. He was not one of Martin Luther King's lieutenants, which would probably have placed more of a spotlight on the whole thing. His image was of a fellow of great competency and good background, a solid resume, and qualified.

G: But if this racial sentiment was not articulated, how did you know it was there, how was it manifest?

O: Of course you knew. The people who were the most active in presenting arguments against creating a new department and adding another layer of bureaucracy, while some of them were well motivated, you knew the cast of characters. You knew with some that was a specious argument and behind that was a concern about seeing a Weaver in the

cabinet. And this was set up in a sense. You were going to create this department. Our argument, of course, didn't go to who's going to be secretary. It went to the need for the department, the demand for it; the time had come. But, the word was clearly out: create this department and the first secretary will be Robert Weaver.

G: Yes. Well, let me reverse the question then and ask if the administration's motivation was actually to promote Robert Weaver rather than to establish the need--?

O: No. The need, as we saw it, went back to the Kennedy period. The creation of the department was something that we were persuaded was essential. Who was going to be secretary evolved in terms of the early-on mention of Weaver, which went back, as I recall it, before Johnson. Weaver had become involved in the administration over that period of time. The President's motivation in no way went to "I want this department so I can name Weaver." I think the President would have preferred not having that in the equation, because I know he resented some of the activities that went on by way of pressure. But it wasn't that Weaver was somebody from the hinterlands and you could question his qualifications. The fellow was a very substantial guy and he had performed well in the private sector and in government. He had qualifications that would be hard for the Senate to find problems with in terms of confirmation.

But Johnson, I know, had made no commitment to Weaver. I'm positive of that. And whether a Weaver had existed would not have impacted on Johnson's desire to pursue this legislation.

G: When you advanced this legislation on the Hill, were you asked by members and senators whether you had an intention to name Weaver to this?

O: Yes, in a few instances.

G: And how would you [respond]?

O: My answer to that is, "I have no idea. I know no commitment has been made."

G: Yes. Was there also a problem of encroachment on the turf of existing departments?

O: Yes, some. If you're going to carve out a new department, obviously you're affecting elements of other departments. The departments that would be altered to create the new department were headed by people who are our people, and they were in no position to express annoyance or disturbance.

G: One element here was apparently the status of FHA. And it did retain a separate identity but within the new agency.

O: That's right.

G: Do you recall how this was devised?

O: We had to give in. It's the old compromise; it was a very strong view. That was one element of salvaging that could be done by those in opposition to the department. "If you're going to have the department, we at least will salvage that aspect." I'm not too sure that went to the merits as it did to the desire of some of the opponents to salvage something.

G: Yes. Sparkman was the one that introduced the amendment. Is that significant?

O: Only in the sense that at the committee level he had some involvement with FHA. It's a vague recollection, but I think that he had some role at the committee level involving FHA and therefore had a particular interest in this aspect of it.

G: Anything on the private housing industry's attitude toward this bill?

O: No.

G: Okay. You also had a constitutional amendment on the presidency that dealt with presidential disability and filling a vacancy for vice president.

O: Yes. We had the Johnson illness, too. My recollection is that the Vice President was not charged with any responsibility of governing during LBJ's illness. But it brought, again, into focus a problem if the president was unable to perform his duties, how did a transition to responsibility take place. There was a need to clarify it, so it wouldn't be a guessing game if it ever occurred. And that was the example cited: if Lyndon Johnson was unable [to perform his duties], was the role of the vice president clear?

G: The element of electoral votes, reforming the electoral college to some extent, ensuring that the electoral college delegates would vote for the candidate who had received the majority of the votes in a given state, this was something that was not passed but something that was proposed by the administration. Do you recall that?

O: That was more than a passing concern for me. I remember in 1960 in that close election worrying about the electoral votes of Louisiana and the threat which was made on the part of some of the electors that they were not going to vote for Kennedy. I remember two or three of our key people in Louisiana were flown down to Palm Beach and we discussed this matter. I don't remember specifically who the people were, probably Camille Gravel and others. And it was like a nightmare, "What do you mean?" And yet, technically, I don't know how it would have played out. As it turned out, they wouldn't have been able to withhold enough electoral votes to make the difference, but there was that threat. I remember specifically Louisiana, and it might have been elsewhere. It's ridiculous if you carry the state and the electors have the unmitigated gall to decide on their own whether or not they are going to cast their pro forma vote for the candidate who had the majority of the vote in the state. So I'm sure that was in the background of considering whether we

ought to have legislation that would clearly define this. But I don't recall why we didn't make progress with it.

G: How was it resolved in 1960? Do you have any recollection of why they didn't do what they threatened to do?

O: As it turned out, we determined this was a ploy to see if they could get some elbowroom in the new administration.

G: What do you mean by that?

O: They'd go along if you agreed that perhaps some of them might receive some recognition in the new administration. You say, well, this just can't happen. And then you realize that people could be crazy enough and nasty enough to cause it to happen. Then of course you refer to the rules, procedure, and the law. The elector will reflect the result of the vote in the state. Well, what does that mean? It was wild and woolly for a few hours and I don't know as it was very widely publicized. I remember it diverted our attention for a few hours.

G: What was Kennedy's reaction to that?

O: I remember he was totally disbelieving. Your first reaction was to treat it as a joke and then you realize that people could conceivably cause you to have to get court orders or whatever.

G: Did it come to your attention through the newspapers or did they call you?

O: It came to our attention through our people in Louisiana, the early-on Kennedy supporters, who in turn were some of the electors. They had this group among them who were embittered by the end result. But anyway, that is the only time I ever recall any questions being posed as to electors. I think there was an instance where an elector refused to vote for somebody. Historically I think there is an instance of that.

I can't determine in my mind now why this wasn't pursued at that time. Maybe it was treated so lightly that people didn't find a need for it. But, as far as I recall, there's been no change legislatively and the electoral college procedure goes on.

G: A rare defeat in 1965 was the right-to-work repeal.

O: Well, it was a rare defeat, but it was anticipated. You go back over attempts to repeal [Section] 14(b) [of the Taft-Hartley Act] and you'll find that it was an effort pretty much doomed to failure time after time. In this instance we're at the high-water mark of recent history in terms of the strength of the president, and in turn his strength with the Congress. Labor felt that, here we go again. We insist that this is a Democratic Party commitment: repeal. We want it fulfilled, and the votes ought to be there now if they're ever going to

be. Mike Mansfield and others were not persuaded. We in the White House, in all candor, were most reluctant to pursue this effort during the height of this legislative session, because we felt it could adversely affect elements of the program. It could not only bog us down but might have a fallout that would be adverse in terms of support for some of these matters that we've discussed. So there was a delay in getting involved in it. Ultimately, it was brought to the Senate and filibustered.

G: Was the delay a reflection of its lack of priority?

O: Lack of priority? Yes. Candidly, yes. Repealing 14(b)--my view during my years there was that it just wasn't going to happen. Now, I never stated that to the labor leaders, obviously. And it wasn't because I was pro-14(b) or anything like it, but the cold reality was that it was an extremely difficult and, I felt, impossible task. But your commitment was to make the effort and you would fulfill that commitment. And in fairness to the White House and the administration, we didn't have the muscle to repeal 14(b), no matter what kind of strength we had on the Hill at that time. It just wasn't there.

G: So you think even if it had been made Lyndon Johnson's number-one priority, he didn't have the votes.

O: I seriously doubt it. I don't think it would have turned out any differently if it was the first item on the legislative agenda in that session. [I don't think] that the result would have been any different.

G: For Johnson, do you think personally it was simply an obligation that he felt to make it part of the program rather than something he genuinely--?

O: No, no, I don't think it went to whether or not we thought it should be repealed. It went to the cold reality of putting together a legislative program and getting it enacted. And if labor couldn't present to us a reasonable prospect of repealing--and they never were in that position on a head count--then we were not going to rock the boat and potentially destroy other efforts we were engaged in. Now, if labor had a head count jointly with us that showed a reasonable prospect of success, then obviously we would have moved at an earlier time. But it wasn't there throughout the session and the record shows it wasn't there.

We weren't conning labor or trying to avoid our responsibilities. It's a little like civil rights in the Kennedy period. You can get nice stories about your effort in the liberal press and that's lovely. In the midst of failure you're called a hero for trying, but the fact is that it's the possibility of success that you're concerned about. We weren't dragging our feet; it just wasn't there. And if you're going to have that kind of a battle and you're going to get into a filibuster, let's wait a little while. I don't think, frankly, if you go back and review all that, that there was any animosity expressed toward Johnson or the administration in that instance, because the [Andy] Biemillers and the rest in organized labor were totally aware of what the situation was. They did not make an attempt to urge

us in the context of "Listen, we've got the votes. Let us show you the votes." It was "We've got to make this effort, so, okay, make it."

(Interruption)

G: Right-to-work did pass in the House. You did get a--

O: Yes. Well, that's not unusual. I think if you go back over the history of it, it was always that stalemated Senate situation you were faced with.

G: Mansfield assured [Everett] Dirksen that no effort would be made to bring the bill back as a rider or anything else. Why would he do something like that?

O: That was a personal decision on his part. That's really in the context of Mike Mansfield's effort to be a leader that didn't stir up the troops, try to keep things on an even keel. Often his decisions were almost by committee. After considerable consultation with his Democratic colleagues, he did not try to force issues in a demanding sense or dictatorial sense. That wasn't his style. He had a rather reasonable working relationship with Dirksen. We ran into it in a different context in 1968 when we were trying to get the presidential debate issue resolved. We couldn't get Mike or [John] Pastore to force the issue on the floor because Dirksen said he'd filibuster it. Mike said he wouldn't take the floor unless Dirksen was willing to have it seriously considered. So in the give and take in the leadership, he and Dirksen I think exchanged agreements often on scheduling and the rest.

G: Was there a combination by the administration on 14(b) and the farm bill, getting the urban Democrats to go along with the omnibus farm program and getting rural Democrats to support the [repeal of] 14(b), a quid pro quo?

O: Are you talking about the House or Senate?

G: The House.

O: Yes. You were always in a reasonably good position to get favorable House action and you were never in a good position to get Senate action. I really don't know how you could have put that together. Of course, labor's activity was very heavy. Labor lobbying on 14(b) would be at least as extensive, if not more so, than on any other legislative item. But I don't want to suggest that the labor leadership in the AFL-CIO were cynics in this regard. They were committed to repeal and they'd break their pick trying to bring it about. But as I told you earlier, when you got to the Senate we needed more evidence than they could present on the possibilities or probability of success. They didn't have to guarantee it but at least show a serious, in-depth head count that the possibilities were there for us to disrupt other legislative activities. So as far as exchanging support, farm bill [for] 14(b), I guess there probably was some of that in the House.

- G: But could this kind of exchange be a way to muster more support for the farm bill?
- O: I don't think it was close enough, the relationship there. You might play that off against something else, but not off 14(b) particularly.
- G: But the logic here was that a congressman could vote against the prevailing opinion of his constituents if he were convinced that in doing so he in turn would get something else that his constituents were very much in favor of or that was very vital to his district.
- O: Well, yes, though that's not an unusual situation or an effort that wouldn't be undertaken.
- G: Okay. In the farm bill, the administration did want to shift some of the burden of farm income support to the consumer, and this was not wholly effective. What was the hang-up here?
- O: Well, I guess it's pretty obvious. There wasn't a great deal of enthusiasm about shifting cost to the consumer. The traditional farm legislation has been that you take it out of the taxpayer but you don't do it directly and observably. We, of course, were trying to play the game that we were advocates of all these supports and the consumer pays indirectly. Why not separate this out in some form so the consumer payment is direct? Consumer involvement by way of partial payment is direct, and that of course would lessen the imposition on the budget. But that wasn't going to fly. It was one thing to vote for farm legislation, it's another to advise your constituents that they were going to issue a monthly check to the government for this specific support.
- G: Anything else on the farm bill that you recall?
- O: No. As I said early on, what I always ran into with farm legislation was an inability to comprehend the subject. On a staff level our tendency was to just keep it as simple as possible in terms of head counts and leave it up to the Department of Agriculture and others in the private sector to promote the substance. I found it extremely complex. So I wasn't very effective in talking farm legislation substantially on the Hill.
- Orville, incidentally, not only was very knowledgeable but he was very effective; he was a hard-driving lobbyist, which I liked. He just rolled up his sleeves and jumped, right into the pit. He didn't leave that to his underlings.
- G: Was there a balance that had to be achieved, or could he become too aggressive in that role?
- O: Well, Orville was a fellow--you never had to dwell at length on trying to determine Orville's stand--who was very direct, outspoken, candid, and came across as a two-fisted guy. Fortunately for us, we had an aggressive, hard-hitting, hard-working, sleeves-rolled-up fellow at the head of the department who worked that Hill very hard. And that was something we direly needed, particularly in this area.

- G: The Appalachian Regional Development Act, here was an example of designating one geographic area of the country for special developmental aid--
- O: That was an aspect of it, obviously. On reflection you'd have to wonder how you got it enacted, because this was special legislation applying to a geographical segment of the country and you have to get support across the board to enact it. And while you may have all the justification in terms of the need, there were a number of people who felt their section of the country also was in dire need of similar federal support. So you had to convince people to go along with Appalachia, even if it did not inure to the benefit of their area of the country. There were attempts made to broaden the base to include other sections of the country. In fact, there were ten counties in New York which were determined to be eligible under this program. But that was a major hurdle to overcome, along with, of course, the basic concept of a program of this nature. The major hurdle was to arouse enough interest and support on the part of a number of people who were not going to benefit directly or indirectly.
- G: You have described in the past how Jack Kennedy's commitment grew out of his--
- O: West Virginia primary, yes.
- G: What about Johnson's commitment to this measure?
- O: Well, I think that the cold reality is--I guess it's wrong to describe a situation as being impressive when what you're talking about is the dire need manifested by any evaluation of this part of the country. His gut reaction was very strong, because this was up his alley. This was something that he not only well understood but had a great deal of interest in and commitment to. So he rolled with this one very naturally. Kennedy's motivation was a little different; his was deep appreciation for the openness and fairness of the people of West Virginia in a political context, along with the obvious dire needs of the state.

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- G: The Republicans posed an alternative to allocate funds for all depressed areas of the country.
- O: Yes. That obviously had merit, but I'll have to say that I was cynical enough to suggest that this was more an effort to derail the proposal than to respond to need. But it's sort of typical of the process.
- G: Proxmire voted against this measure, the only northern Democrat to vote against it. Why do you think he did that?
- O: I don't recall. As we know, Proxmire's history in the Senate has been one of considerable independence, non-hesitancy in expressing his point of view regarding any matter, and I

guess this probably reflects it. What was the basis of his opposition, I don't know, but obviously it flew in the face of general Democratic support and therefore was spotlighted, and yet that didn't deter him. But I don't think that was as unusual as it might appear. He has asserted his "independence" on any number of occasions over his Senate career.

G: Dirksen voted for it, I noticed. Any significance in that?

O: There were some of his colleagues that stood to benefit from it.

G: The Senate did accept several amendments that prohibited using these funds for reclamation of land that had been strip mined until a study was done. Any significance there, or was this--?

O: That was a reaction to private-sector pressure. They wanted to postpone that matter if they could, avoid action in this area, and they succeeded.

G: Okay, you had a depressed areas bill, a Public Works and Economic Development Act of 1965. Was this in effect an Appalachian bill applied to other areas of the country?

O: Yes, somewhat. This is an effort to pinpoint depressed areas nationally and actually reflect back on the Republican effort in Appalachia. If you're talking about depressed areas, you're talking about need in other sections of the country and here's a bill that you can consider in that context.

G: Anything else on this bill that--?

O: No, this rolled along reasonably well without any great controversy.

G: You had the excise tax reduction, also.

O: The Democrats participated in fostering the concept of aiding economic growth through selective tax reductions, and that had occurred in the Kennedy period. Now on the excise tax side, the argument was that reduction of these taxes which created a basic economic burden would be helpful in spurring economic growth, improving the economy generally. You get into excise taxes as sort of an add-on to the same basic philosophy that you had in reduction of taxes. At an earlier stage in 1964 the excise area was probably something that should be tackled, too. Economic stimulation, they were calling it, and I guess there are Republicans that subsequently made the same arguments.

G: One of the big questions was whether or not the businesses would pass the full amount of the reduction on to the consumer.

O: Yes, and that was a logical question, because I think many of us were rather cynical in that regard, really wondering about the businesses passing on the reduction voluntarily. My guess is the record would indicate that didn't happen to any great degree. That is a

reflection of my cynicism--this idea of verbal commitments from people who were going to receive a tax break to pass it on to the consumer. I don't think you can have any real assurances of that. I don't know what the record shows but I'm darn sure it didn't approach the potential.

G: Yes. Is there any way to make that mandatory?

O: I don't know whether you could legislatively. Probably. But the opposition to making it mandatory would be strong. I can hear people now saying, "You're distrustful. You don't think your fellow Americans in the business community are prepared to discharge their responsibilities to aid economic growth." If you can't mandate it legislatively you're dreaming.

G: There was one provision of the bill that was tied to automotive safety. Do you recall this?

O: No, refresh my memory on that.

G: Well, it was one aspect that would use the bill to establish automobile safety regulations. I don't know whether it was a rider or whether it was--and it was rejected, but do you have any recollection of this?

O: On the Senate side this effort was contemplated at least or made, probably led by Abe Ribicoff, and that Wilbur Mills flatly stated he didn't think that an excise tax bill was a proper vehicle to impose safety regulations in the auto industry. And he refused to go along with the suggestion. It was a good idea, though.

G: This, presumably, would be seat belts or something of that nature.

O: Yes. I recognized Mills' argument. He had some merit to the argument, but on the other hand it wasn't a bad idea on the part of Abe and others.

G: Yes. Okay, let's talk about eliminating the gold cover on bank deposits.

O: This had been kicking around for a long time. I guess the feeling was that it was quite restrictive and limited expansion of the money supply. It was strongly advocated by Treasury, and it was their baby.

G: Did the bankers support you on this one?

O: Yes. They'd be happy to be relieved of some or any restrictions.

G: Your Republican opponents argued that the real solution was to do something about balance of trade deficit rather than--

O: Yes. That was a valid argument but it was in the wrong context.

- G: Another monetary issue was the Silver Coinage Act.
- O: The motivation to move on that was the growing shortage of silver. Why was that necessary? It went to archaic concepts, so there was no need to continue to have that regulation. It just was not an overriding matter.
- G: Yes. Well, was part of the problem that people were hoarding silver coins?
- O: Yes. They were hoarding silver coins and the silver available in the marketplace was limited. You had to retain a certain amount of silver under law. If the restrictions were lessened or eliminated, then the market would be open and the shortage eliminated. Then the maneuvering and manipulating in the silver market might be reduced. This was supposedly created by the government regulations on silver, and if you eliminated that then you've corrected the problem, as the experts saw it.
- G: Did the silver-producing states oppose this measure pretty actively?
- O: Yes, but I think it was more in the percentage of retention rather than not doing anything. There were, in a few non-silver states, some Democrats who suggested we go further and soften the restrictions even further.
- G: So it was to some extent a compromise measure?
- O: Yes, it was, on percentages in the amount of retention, yes. Somebody said, "Why not eliminate all the silver in the half dollar also?"
- G: Okay, let's talk about some appointments. John Connor was confirmed as secretary of commerce. Anything on his replacement of Luther Hodges?
- O: I don't recall specifically how he surfaced as a potential secretary. It was his business and private-sector background. John was not a political activist.
- G: [Nicholas] Katzenbach, who had been acting attorney general, was appointed [attorney general].
- O: Yes. That was a very logical appointment. There were many who wondered why such a long delay in naming him. I don't even recall how long it was, but I do recall there was murmuring among the political people and the press. And I don't think I ever knew what was in Johnson's mind. He may well have had other thoughts about who should be attorney general. But Nick had built quite a record and had acquitted himself extremely well in some very difficult areas. It was a very applauded decision.
- G: He had worked with you some on legislation.

O: Oh, yes. I was extremely impressed. He had been a strong right arm to Bobby Kennedy.

G: In what respect?

O: In the civil rights area. He had a fine reputation on the Hill. A brilliant guy. But I would think he was a Johnson man. Johnson inherited him, as he inherited a lot of us. When it came to this appointment, it may have been that LBJ had other thoughts and it took him a while to come to the decision to name him. In any event he did and it went down well.

G: Henry Fowler succeeded Doug Dillon.

O: Well, there again it was number two moving into number one, and he had earned it. Joe Fowler was extremely active on the Hill and so there again, it was logical to promote him when Dillon left. I don't recall there was any great discussion about alternatives. I think that moved quickly and easily.

G: John Gardner replaced [Anthony] Celebrezze in HEW.

O: There again it was an appointment that was met with widespread approval. I don't recall any controversy about it.

G: Was Gardner effective in working on the Hill?

O: It wasn't John's style to be as sleeves-rolled-up and aggressive as Orville and some of the others. He had a tendency to leave that to others. I'm not saying that in a derogatory sense; it was a matter of style. To get into the pit and the wheeling-dealing and the smoke-filled room aspect of the Hill, I don't recall John being quite as involved in that way as others were. As the years went on, [when] John went into Common Cause and he became more involved in the smoke-filled rooms.

G: Of course, Gardner did have Wilbur Cohen.

O: Oh, I was just going to say, if I were in John Gardner's position, I would have done exactly what John Gardner obviously did. That is turn over the reins to Wilbur to a great extent in terms of congressional relations. And Wilbur, as I've said earlier, in the role of the congressional relations person was right there at the top. So John could be very comfortable in having Wilbur as the point man.

G: Yes.

O: And he was.

G: Arthur Goldberg was appointed UN ambassador, resigning from the Supreme Court, after the death of Adlai Stevenson, and Abe Fortas was appointed in Goldberg's place. Let me ask you to recall what you know of this sequence here. Why do you think Goldberg

resigned, first of all?

O: I've never formulated a real answer to that. I've wondered over the years myself. I couldn't comprehend why Arthur would leave the Supreme Court to take a position at the UN. The UN was not a cabinet status position. While the ambassador to the United Nations would occasionally attend cabinet meetings, clearly he was under the direction of the secretary of state, who was the cabinet member. I remember Arthur, shortly after he took the post, attending a cabinet meeting prepared obviously to have a considerable discussion. When he had an opportunity to comment, the President suggested to him that he perhaps best take up those things with Dean Rusk. I think Arthur may have misunderstood the extent of his role as UN ambassador in decision-making, policy-making. He would simply be a spokesman enunciating a position or a policy. So I never understood it.

Arthur is very, very able and I had a close association with him when he was secretary. We were involved in a lot of legislation. I thought it was a most appropriate appointment when he went on the Court. What motivated him to leave the Court and go to the UN, I never have understood. I thought that it was not even lateral, that it was a step down. Obviously, Arthur didn't feel that way and I don't know what pressures Johnson exerted upon him to take that step. Obviously, Johnson was very interested in placing Abe Fortas on the Court, and this move gave him that opportunity. But I must say, among us, we were taken aback and we discussed it at length. It was a topic of discussion in Washington. Nobody was able to fathom what prompted Arthur to agree, and none of us, of course, were privy to what might have taken place between Arthur and LBJ that brought about the action.

G: There are two explanations. One is that Goldberg himself grew restive and wanted something that involved more activism and, having admired Stevenson, saw this as a chance perhaps to do something about Vietnam. The other is that LBJ talked him into assuming a job that was represented as being more than it actually turned out to be.

O: I'd be inclined toward the latter.

G: Really?

O: It was well known and Arthur should have known that Adlai Stevenson was frustrated in that role in the Kennedy period. Stevenson had to be reminded, at least indirectly, that the role was limited and he did not have elbowroom to be making independent judgments or decisions in the United Nations.

G: When was he reminded?

O: I know that Adlai, through friends of his, made it known to the President that he wasn't pleased with what he could perceive to be a decided lack of attention to him and lack of recognition. Clearly the role as envisioned by the Oval Office was in place with

Stevenson, and Arthur would have been to some degree privy to that. I was and [so was] most everybody in the administration, so I don't think that Arthur could have envisioned that this role would afford him the scope, if that was his desire, to be an activist to any great degree. He went on to seek the governorship of New York at a later stage. His interest in being politically active was underscored by that effort. And maybe he was disenchanted with the Court, but he has a great legal mind. I think it was a pretty good sales pitch on the part of Lyndon Johnson. I'm comfortable saying it, though I wasn't privy to it.

G: This did leave a vacancy on the Court, and Johnson filled that vacancy with Abe Fortas. Was there anything in clearing the Fortas nomination that would foreshadow the problems he had three years later when he was named chief justice?

O: No, I don't recall. While there was a great deal of surprise in the terms of the withdrawal of Arthur, the appointment of Abe was applauded. The recognition of Abe Fortas as sort of a legal giant was pretty widespread. I don't recall there was any element of concern, foreshadowing what occurred later on.

G: How would you describe his relationship with Johnson at this time?

O: Abe?

G: Yes.

O: Extremely close. He and Clark Clifford I'm sure had many contacts with Johnson I wouldn't be aware of. The contacts that I was aware of would be more formal in terms of having these two fellows in to discuss legislative proposals, messages to the Hill, strategy. I had a fair amount of contact with both of them in that context. I don't know how you'd do a ranking. I would think probably Abe, Clark, rather than Clark, Abe. But it was close, from my observations. There was a difference in style between the two fellows when they were in these sessions. Abe was more apt to be brief and concise in expressing his views; Clark was more apt to get into rather lengthy statements of views. Who was first among equals I don't know, but I had a feeling that perhaps Abe had more personal involvement with Lyndon Johnson than Clark over the years.

G: When you speak of them, you speak of them as a pair who worked in tandem or together. Is that the way they--?

O: Well, that was my experience. We would sit down, half a dozen of us, with the President to discuss the content of a message that might be developed, or review a message that had been drafted, trying to get input. And Johnson would like to get a variety of input, political input, reactions. We'd have a free exchange. You'd nit-pick the hell out of that message. In fact, I used to feel sympathetic toward the drafter because there would be very little left by the time we "experts" got our talons into it.

I think when it got to strategy in terms of the possible re-election campaign in 1968, it was probably Abe more than Clark. There were some sessions we had where Abe was involved with Jim Rowe and others. So his involvement extended, to some extent at least, into the political arena. But there was no question that both of them were very much on the inside.

To give an example, you may recall that I had given this Bible or missal to the judge on *Air Force One*, which I had taken off the side table in the President's bedroom in *Air Force One*. A long period of time elapsed and I was questioned about what happened to what turned out to be a Catholic missal. I had no recollection. I handed it to the judge; the President put his hand on it, the swearing in ended, and it disappeared. I didn't make any effort to note what happened to it. I don't know how long a period of time [had] elapsed--it was months as I recall--and one day Abe and Clark asked if they could see me. They came in and they showed me this book with a cross on the cover, leather-bound, and asked if I was familiar with it. I said, "Yes, that looks to me to be the book that I gave to the judge on the plane." And they said, "Are you sure?" And I said, "Yes," because I was sure. And it was in a box and it was as new then as it had been that day. I never understood why Abe and Clark came to see me to get verification of the authenticity of this. I guess you know where it is now.

G: Yes.

O: I don't.

G: It was on exhibit in the [LBJ] Library.

Did they discuss this in a confidential manner with you? Was it clear that--?

O: I might have construed it as confidential. After all, this had been an act I participated in, a reflex action. I had not opened it to look at its contents, and I guess at times I referred to it as a Bible and somebody reminded me that it probably wasn't a Bible, it was a missal. It's a missal, I assume. Why it was on the [plane]--I think it probably was a gift that was very recent, maybe even in the course of that trip. I recall the cardboard box, the cover had been taken off and placed on the bottom and it was in this box. And I took it out of this box. All these months elapsed--where was this discovered? Nobody volunteered to tell me, and I didn't pursue it.

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G: [Did they] advise on foreign policy issues as well as political issues?

O: There were sessions on Vietnam in terms of support of the President, what we might engage in that would enlist continuing support, either on the Hill or generally. That would be the focus of some of the meetings or become part of the discussion in meetings at one time or another. How many of these meetings took place I don't recall, but there were a

number of them. They could be meetings with the President from the outset, or having the President join us during the course of the meetings. But the point is that those in attendance would be members of the staff. If it were foreign policy I assume Mac [McGeorge] Bundy would be there with Joe Califano, four or five of us, Dick Goodwin and maybe Bill Moyers, I don't know. But the only "outsiders" that weren't official members of the staff would be Abe and Clark. So, clearly, the President had great confidence in both of them.

G: Was Fortas' relationship with the President a give-and-take relationship, or did he, do you feel, defer excessively to the President?

O: I wouldn't say defer excessively. By the same token, I don't recall he would try to dominate a discussion. The best way to describe it is when Abe spoke, the President listened. Abe would consistently get the President's attention as he participated.

G: But would Abe be willing to offer information that the President didn't necessarily want to hear?

O: Well, I don't know whether these meetings would be that direct in terms of differing opinion. These meetings that I was involved in were more strategy or refinement of strategy or "maybe we ought to change this paragraph or move this somewhere else," or "perhaps we shouldn't get into that phase," that sort of thing, a group discussion. The other intriguing aspect, when you bring the discussion into final focus and get a consensus view, generally, as I recall these meetings, everybody would summarize quickly what their view might be, [but] inevitably, no matter which way it went around the table, Clark Clifford would have the final word. He'd express his view last, and I always had a feeling that Clark was very interested in the views of others before he developed his own final judgment.

G: Then would you say that Fortas' advice was more strategy, how to effectively achieve a certain course of action?

O: I would think so. There might have been meetings of this nature; I shouldn't just close it out. But generally, my recollection was that meetings of this nature took place after you had agreed on a basic concept. You're going for the program; you're now going to develop the strategy, what elements should you build into it that might be pleasing to some members of the Congress in key positions that might have potential widespread public acceptance. It wasn't "should we go forward?" as much as "let's refine this, get everybody's input, get a consensus and then we're all riding with the same program to the same objective."

That was extremely important, because the launching was awfully important. You didn't want to find that you had inadvertently done something in the launching that was misconstrued, that you failed to make a salient point or you failed to include the views of people on the Hill who are going to be responsible to move this. In that context it wasn't

envisioned that the person who would draft what was generally a pretty lengthy document was doing anything but putting words together in a nice form, you know, the rhetoric. But then when you got to all the refinements, of course, the tendency was to pretty much destroy the original draft, because you get six or seven people with their input, by the time you're through it's been changed rather drastically. Then the drafter would have to get back to the typewriter and put it in the best form possible, incorporating all these changes. That was the type of meeting that I'm referring to where I would run into Abe and Clark.

G: Did Fortas continue to have this kind of input after he went on the Court?

O: I remember Abe in the White House different times after he was on the Court, and my recollection is that some of our sessions had to do with 1968 strategy, well before Johnson decided to withdraw. There were some sessions where you had a different cast of characters around the table. Abe would be at some of those. It had a different cast of characters because then you would have a Jim Rowe, some three or four others, I don't remember offhand, who were involved on the political end of things. So Abe would be in that.

I don't think Clark Clifford ever tried to present himself as a political expert, which he wasn't. He didn't attempt to. I recall when Jimmy Carter was running [for president], I was commissioner of the NBA. He wanted Clark to go down to his farm to discuss political strategy. Clark called me and discussed with me at great length input I could make to help his presentation. Clark was very much a Washingtonian and had not been politically out of Washington through the years. But Abe wasn't that different either, I guess, except that Abe was a keen observer of the political scene. He had a good feel for it.

G: Some of the senators objected to the Fortas nomination on several grounds: one, his civil liberties thrust as a lawyer, particularly the *Gideon v. Wainwright* case. Anything that you recall here?

O: Not really. I have no recollection of what the confirmation vote was, but I imagine it was overwhelming. I don't recall serious opposition.

G: Another question that was raised by Carl Curtis was Fortas' role in the handling of the Walter Jenkins case. Do you recall this as an issue?

O: You could depend on Curtis to get involved in debate along those lines. He had a reputation of being a little on the mean side, so that would fall into the pattern. But I'm assuming, to the best of my recollection, that the involvement of both Abe and Clark in the Walter Jenkins case was pretty widely known. Clearly, Lyndon Johnson called them into this matter early, on the strategy to handle it. My recollection was that I was in New York when that broke, with Hubert Humphrey.

G: Well, Johnson was in New York I think when it happened.

O: Well, then I was in New York.

G: I think there was a big rally here or something.

O: Yes, and I was here. I had no conversation with Lyndon Johnson, as I recall, during that time in New York, on the matter, but it broke at the time.

G: Yes. Was there a charge of cronyism at the time in 1965, that Fortas was a crony of LBJ or--?

O: Yes. Oh, there was some of that. I think that the more specific reference went back to the legal actions attendant to the [1948] Senate election. That was, I think more than anything else, in the forefront of discussion--that he had played an extremely key role in that battle, that ultimately Johnson prevailed and Abe Fortas was given a lot of credit for achieving that legal victory.

G: What did Fortas do? Do you recall?

O: I don't, but I gather that was the beginning of the close relationship. My knowledge of Abe Fortas was somewhat similar to my knowledge of Clark Clifford; it came through these occasional contacts. I wasn't acquainted with either man before I got involved in the 1960 campaign. In the case of Abe and his wife, it resulted in having dinner at their home on occasion. We lived in the same neighborhood in Georgetown. With Clark, I had gotten to know him back in the Kennedy period because he had a relationship with Joe Kennedy which became observable after Los Angeles. We had one strategy session at the Cape on the campaign at some stage and Clark was present, which was a surprise to all of us because he had not been involved. It turned out that Joe Kennedy had invited him to participate in this strategy session.

G: Thurgood Marshall was named solicitor general, the first black to have that appointment. And former Mississippi Governor James Coleman was confirmed as a judge on the Fifth Circuit Court of Appeals. There had been a lot of criticism in the Kennedy Administration, that in spite of the administration's support of civil rights, it was naming some pretty conservative jurists with histories of segregation. Was there a connection between the Coleman appointment and Thurgood Marshall's appointment?

O: I don't recall.

G: Really?

O: No, I don't recall.

G: Let's see, [James] Eastland would have been chairman of the Judiciary Committee.

- O: I know, and it could well [have been connected], but I would have to say I don't recall that I was privy to any of that.
- G: Was this a continuing sort of a problem?
- O: Well, "sort of a problem" is probably the best way to describe it. After all, the procedure in naming federal judges hasn't altered much over time. You always take the chance of having the card, as they say on the Hill, filed. Somehow or other you don't get around to confirmation and then there were often recommendations from senators. So it's a matter of accommodating to some extent and hopefully at the same time bringing somebody to the bench that you won't have to apologize for in the future. If you're looking at the state or regional level, where it might entail past records, that might not meet the total approval of a northern liberal. But Kennedy's view, and I imagine Johnson shared it, is that he wasn't going to have that sort of single-issue litmus test divert him from doing what he thought was best under the circumstances. So if you're looking for the perfect judge, you're looking for the perfect human being, and that hasn't happened yet.
- G: Was Eastland's position as chairman of the Judiciary Committee an obstacle for the administration?
- O: It was something that had to be considered, but Eastland didn't remotely play a role similar to [the one Jesse] Helms has played in some areas of presidential appointment. You certainly couldn't fly in the face of Eastland, but my best recollection of Eastland, as difficult as he was in terms of our legislative program in civil rights and the rest, he was not overridingly mean in trying to derail presidential action. I don't recall any specific instances of an appalling situation where he arbitrarily blocked the President. Maybe it occurred. Certainly we weren't in accord on many matters, that's for sure, with Eastland.
- G: Charles Halleck, the son of former minority leader Charles Halleck, was appointed to the District of Columbia Court of General Sessions. Any recollections of this appointment?
- O: He had a number of friends in the District of Columbia, among them some pretty staunch Democrats, and Charlie had a high batting average in opposition to our programs. There had been a couple of instances of Halleck's support. Also this was a very sensitive family matter. Charlie was very anxious to see his son move forward. One of the staunchest advocates of Charlie Halleck was Milton Kronhein, a very unusual fellow, widely known, a marvelous human being that all Democrats knew rather intimately, from presidents on down.
- G: Active politically?
- O: Well, in a sense, yes. The District of Columbia political activity wasn't very meaningful, but he had a wide circle of friends that crossed party lines. I remember that he was keenly interested in Charlie Halleck's son.

- G: Let me ask you about Francis Morrissey, a longtime friend of Joe Kennedy and Jack Kennedy.
- O: He had been an associate of the family before I had an association with the Kennedys. I became well acquainted with Frank Morrissey going back to the Senate contest in 1952. Frank was a very loyal and devoted assistant to the Kennedy family, and there was a keen desire to get him taken care of. Unfortunately, Frank had some weaknesses. There was nothing wrong with him personally, morally or anything, but [he had] some weaknesses in terms of qualifications. They were seized upon and there was a continuing attempt to bring about his confirmation and there was a continuing effort to derail it. It became rather personal, the attacks on Morrissey, at least from some quarters, and the ultimate decision was to withdraw his name. That was very controversial. It elicited a lot of publicity.
- G: Yes. The ABA opposed his nomination in 1960 for another judgeship, so I gather they were questioning his qualifications.
- O: That's right. It wasn't anything personal. They went to his qualifications, and of course the ABA had found him unqualified at an earlier stage, and there you are. Probably too little attention was paid to the problem that would arise if you brought his name forward. Frankly, it wasn't surprising that this controversy erupted. I think there was a misjudgment on the part of Teddy Kennedy. Of course, you could say that in retrospect, but the fact is that this was bound to be controversial and it turned out to be extremely so.
- G: This episode has been cited as one of the irritants in the relationship between LBJ and Robert Kennedy.
- O: I have no knowledge of anything specifically that would support that, and I seriously doubt it. There had to be a realization on the part of the Kennedys that in making this move they were taking a gamble. I at no time felt responsibility for failure should it in any sense be placed at Johnson's doorstep. I thought it was inevitable that this would be very controversial and I don't think those among us who were staunch Kennedy people were overly surprised that this wound up being as controversial as it was. If that was an irritant involving Bobby and LBJ, I'm not aware of it. I certainly wasn't privy to any comment on Bobby's part, reflecting on LBJ re Morrissey.
- G: You don't think that Johnson used the nomination as a way to embarrass Robert Kennedy?
- O: No. You see, there might be some validity to a contention such as that if you had a fully-qualified candidate and this somehow occurred. But the weakness was the record, the ABA actions, the early actions. It was an absolute handle for those who wanted to cause a storm. The handle was there for them, and they seized it. And I don't know how Johnson could have been construed to take advantage of it in any way. It eludes me.
- G: Were you surprised that you were not able to put this one over when this was the high tide

of the administration's strength?

O: I don't recall being involved in it, in putting it over, so to speak. This didn't come in the normal sequence of events in the congressional relation's office.

G: Is that right?

O: No. This had to be understood up front. You're going with this, we'll be glad to make the proposal, forward the name, but you've got to get the job done yourself, because all of us recognize there are problems here. And maybe you can get away with it, but perhaps not, and if it gets to controversy, then people look at the record. You've got a difficult situation defending this appointment. The withdrawal was a matter of judgment on the part of the Kennedys. I don't recall having it discussed with me by either Johnson or Kennedy. I don't recall Teddy saying, "Maybe you could give us a hand."

G: Okay. It's interesting. This was a time when Johnson was recuperating from that gall bladder [surgery].

O: Yes, I didn't recall the time sequence of that. You just have to conclude that there was just too much of a burden to carry. I always found Frank to be a pleasant guy. I never tried to evaluate his competency as a potential federal judge. But he had been on a local court in Boston, the district court or whatever. He was known as a total Kennedy loyalist, almost a member of the family, from Joe Kennedy on through every Kennedy. It was a desire on their part to get him a position of permanency at a reasonable level, in recognition of all the services rendered. That's not unusual; in this instance there was just so much there for the opponents to utilize, and you were going to have just controversy and embarrassment throughout the process.

G: There's an indication here that [John] McCormack was a very active supporter of Morrissey.

O: I believe he was. I don't know how active, but if he were an outspoken supporter and advocate, then the answer would be yes.

End of Tape 2 of 2 and Interview XIII