

INTERVIEW WITH MITCHELL ROGOVIN, October 23, 1968

Assistant Attorney General in Charge of the Tax Division

Interviewer: Thomas H. Baker

B: Mr. Rogovin, to start with, may I outline here what I know of your background, subject to your correction, please? You are a graduate of the University of Virginia Law School in 1954, served in the United States Marine Corps for the next four years, then joined the Internal Revenue Service, where eventually you became chief counsel. In 1966 you moved from the Internal Revenue Service by appointment to this position as Assistant Attorney General. Is that essentially it?

R: That's my life, yes.

B: That brings up the question: Is it correct and fair to call you a career government official?

R: I suspect people become career government officials when they start referring to the government as "we" and the taxpayers as "they." I came into the government with the idea of staying four years as a tax attorney learning, my trade and leaving government. It did not happen that way. I've been here ten years now. To that extent, I'm a career government employee.

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B: That's going to come up later in the interview when we get into the area of personnel. Have you had in your career at any time any strictly political activity?

R: No, I haven't. My wife, as an active Democrat in Fairfax, Virginia, was the political activist in the family.

B: Are you a registered Democrat?

R: I am.

B: Then you have not been involved in campaigning as such with either Mr. Kennedy or Mr. Johnson?

R: No, that's correct.

B: To get to your relationship with Mr. Johnson, when did you first meet or come in contact with Mr. Johnson?

R: It was Christmas of 1964. I had been serving as Assistant to the Commissioner of Internal Revenue during both the Kennedy and Johnson Administrations. I had planned to leave government in August of 1964. I had an opportunity to go into teaching and talked with Carol Agger and Abe Fortas about going into academic life. Carol Agger suggested it might be propitious to wait until after the election. If the President were to be elected, she said he might want to make some changes in the Internal Revenue Service and she would support my nomination as Chief Counsel. I waited; he won; and I became

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Chief Counsel. Sheldon Cohen, who had been Chief Counsel, then became Commissioner. I first met the President right after Christmas in 1964. John Macy had asked me to come down to the White House at 6 o'clock as the President wanted to chat with me, ostensibly to decide whether or not to appoint me as Chief Counsel. We chatted for about one-half hour and I found him quite inspiring. He said he was quite anxious for me to take the job and I was absolutely flattered and naturally accepted.

B: What goes on in a conversation like that to inspire you?

R: To begin with, I was 34 years old -- just turned 34 and I suspect it didn't take much to inspire me. The idea of having a private meeting with the President, let alone under those circumstances, was quite unusual. But the inspiration, if one is allowed to use those words here at the tail-end of this Administration, came about because of his Populist attitudes. He talked about doing the "right thing." Now, I suspect the President's knowledge of the administration of tax laws and the problems of the tax collector are minimal, but his reactions were sound. Doing the "right thing" is really the essence of good tax administration.

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This was particularly striking, because I had been a maverick in the Revenue Service, feeling for many years that it just isn't, or shouldn't be, as complicated as it is, and that there is a spiritual essence in doing the right thing. So, that excited me.

B: Was he any more specific about this? At the risk of being trite, did he mean doing the right thing for the little people -- you mention the analogy with Populism; is that the kind of thing he was talking about?

R: I think by and large that was. There is no area of federal activity that touches more of the populace than taxation. On a per capita basis, we're dealing with more little people than anyone else. This is where the abrasion has been the severest; the understanding the least. These are the people who do not have professional guidance by accountants and lawyers.

B: In your status, to use your words, as a maverick in the Internal Revenue Service, had you run into any controversies in this area with your fellow employees?

R: Yes. I don't think they had surfaced to any large extent until we became aware of the fact that the Revenue Service had been actively engaged in bugging and other forms of

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electronic surveillance. These activities were simply wrong; justification was hard to come by. Immediate action had to be taken and the President was a source of great comfort in this regard. He had very strong views.

B: Do you feel that he knew your opinions in this area before he talked to you about the appointment?

R: No, I don't think he knew them directly; he may have sensed them from people he counselled with in making the appointment. I would suspect that Carol Agger, Sheldon Cohen, Mortimer Caplin, John Macy, were people who responded to questioning along this line.

B: You were close to Mr. Fortas and his wife, Carol Agger, and they clearly are among the President's major advisors (particularly Mr. Fortas). Is there a cause and effect relationship there in your appointment?

R: I knew Mrs. Fortas, Carol Agger, simply as a professional. I was a tax lawyer and so was she. Over the years our paths crossed on a number of occasions. We shared common attitudes about the direction tax law and tax administration should take. In direct reply to your question, I was not close to either of the Fortas'.

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B: At this conversation with the President you described a moment ago, is that when you were formally offered the appointment as Chief Counsel?

R: Yes. I'm not even sure it was formally offered; it was just tacitly understood that it was there, and I guess there was an opportunity for the President to withdraw it. My interests were in accepting the job. For a tax lawyer it's a very exciting opportunity.

B: I gather you had no doubts about accepting.

R: No, not in the slightest.

B: After you were made Chief Counsel of the Internal Revenue Service, did you then during that period have any direct or indirect contacts with Mr. Johnson?

R: In one area in particular the President sought my guidance. He was particularly interested in my reactions to his appointments to the Tax Court. I think his appointments have, by and large, been superb. This is one of the areas of Presidential prerogatives where perhaps Senatorial courtesy is not as strong and the opportunity for the people in the Administration to recommend talent was high. The President's quest for talent certainly paid off. He made some superb appointments.

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B: In the matter of advising and counselling on such appointments, would or did the President contact you directly and [did] you talk with him about individuals?

R: Yes. On one occasion I was very sick, or at least my illness was undiagnosed. The doctor had just left our house and told my wife that whatever it was I should remain in bed and would be taken to the hospital. The doctor thought I had had a heart attack. Ten minutes after the doctor left, the phone rang and I could hear my wife speaking -- The White House was calling and the President wanted to speak to me. My wife said she was sorry but her husband couldn't talk to anyone. I was yelling out from the bed, "Sheila, who is it?"

She said, "Shh, be quiet, be quiet, it's the President and the doctor said you can't speak to him."

She then made a snap judgment -- my health would probably improve by talking to the President rather than wondering why he was calling. She eventually put him on. He was very much concerned about a potential appointment and wanted my views. I was extremely negative toward the nominee; I felt he would be a very poor selection. Unfortunately, it was someone I knew quite well, a man who had worked with me.

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It was clear that the nomination had percolated to the President, pushed very much by someone from Texas on the basis of friendship and not judicial talent. I subsequently learned that others that the President had counselled with reported as vehemently in the negative as I had. The man was not appointed.

B: Is this an unusual case or to your knowledge does that kind of thing, that sort of process, go on regularly?

R: Well, the idea of the President calling -- I thought it was unusual. These appointments are usually cut and dried. A list of qualified people comes to the attention of the President and it's normally a choice between eminently qualified people. Here was an instance where someone who I thought totally unqualified as a potential judge had short-circuited the system and his name was before the President. He apparently was not satisfied with the counsel he had received to that point.

B: Is it your experience when the President has a decision like that to make, he gets as much advice as possible?

R: From my limited experience, I think the President has gone outside of the normal bureaucratic system of seeking advice.



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There are people whose positions lend themselves to being a more natural person to check with.

B: In that case, you mean you, ex officio, would be a natural person to check with on a Tax Court appointment? Or would you --

R: I'm not sure that I would be a natural person, although --

B: Or were you classifying yourself as one of the outside --

R: I was really outside of the natural area. I think that John Macy, who has done a superb job in attracting and obtaining talented nominees, was the natural person to check with.

Here a recommendation came from outside of John Macy's channels, and the President wanted a response from someone who clearly knew the man in question.

B: I might insert here for the record, you were referring to Mr. Macy's capacity not so much as head of the Civil Service Commission as this recruitment thing that he runs? Are there any other cases where the President has gotten in touch with you either as Chief Counsel of IRS or in your present position directly like that?

R: There were two other nominations in which I played a part. In both instances I lost extremely able government attorneys to the bench. First, Jim Simpson, who was the Director

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of the Legislation and Regulations Division when I was Chief Counsel. The second was Moxley Featherston, who was the Assistant for Civil Trials when I was Assistant Attorney General. The President was extremely pleased to appoint Jim because he was a blind lawyer who had literally overcome his sightlessness. Moxley was a tougher case, however. He had been an attorney and officer of the Tax Division and would have been a superb selection. At that time, however, there were some rumblings in the organized bar that too many of the court positions were being filled by government attorneys as opposed to the outside attorney. I was at the White House for a social function and I asked the President about Moxley Featherston's appointment. I had sent a letter to John Macy about him some months earlier. The President and I talked at great length about the qualities of the government attorney and how this shouldn't be held against him. Although the President was quite receptive, he also recognized the cosmetic value of appointing an outside practitioner. The last analysis -- the ultimate test -- was qualification, and he said if he couldn't get a well-qualified outside lawyer to fill the job, merely doing it

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for the effect was not satisfactory. Moxley was at the White House at this reception for the Supreme Court at the time and I asked the President if he would like to meet him. Since I was sponsoring Moxley Featherston, I was quite anxious to bring the two of them together. When I brought the President to where the Featherston's were, Lo and behold, Moxley's wife, Rose, did all the talking. I was dying on the spot. I think Moxley was also. She carried on a delightful conversation about her growing up in Texas. I think it bemused the President to see the anguish on Featherston's face as well as mine. Shortly after that, he made the appointment.

B: Incidentally, is this unusual, this spotting you at a social gathering and remembering your position and to discuss this kind of affair?

R: I think the President has got a remarkable memory. Certainly my activity in government has not been such as to bring my name or my face to his attention. He has always had a kind word, knew my name and asked me about the work in the office.

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B: Are you often invited to social functions at the White House?

R: When I was Chief Counsel, I found for some reason we were going to dinners, which I found a delightful activity. It gave me an opportunity to meet some of my brethren in government.

B: Was your wife invited on occasions like this?

R: Yes. On one occasion I escorted my wife to her table and introduced her to a couple of people that I thought she might find interesting during the evening and went over to my table. I almost jabbed myself with a fork to find that she was the President's dinner partner. The two of them chatted all through dinner and after I asked her, "What were you two talking about so intently?" And she said, "Confidence for confidence. I never betray my President's confidence."

B: Do you know yet what they talked about?

R: No, I don't. She's holding that as a lever, I'm sure.

B: That may be an answer to my next question. I was going to ask if that kind of attention to the wives doesn't perhaps mollify them to the kind of hours you must work.

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R: I am sure it did. I think the excitement of a White House dinner or reception certainly makes the effort of the job seem worthwhile. Certainly in the case of my wife and my family, they recognized that I couldn't do this for a career. That if I held this job for four years, there would be a great deal of excitement and -- a term my wife doesn't find much sense in -- a lot of fun. That it has been. But there was always the recognition that this wouldn't keep on forever. You just couldn't keep pace. The hours are too demanding, the pulling away from the family is overwhelming. The idea of Presidential appointees serving for a limited period of time makes a great deal of sense.

B: Do you recall the circumstances of your appointment after this, as Assistant Attorney General for the Tax Division?

R: I was Chief Counsel, thoroughly enjoying my job and working at it diligently. When Louis Oberdorfer resigned from office, since these two jobs have a great deal of daily contact, I was quite interested in seeing the Assistant Attorney Generalship filled promptly with a competent person. In December of 1965 I went to a meeting of the American Law School Association in Chicago to talk with

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a law professor in whom I had great confidence. I had spoken with the then Attorney General, Nick Katzenbach, and he encouraged me to find out if this man was available. Nick thought this man was a fine potential nominee. I spoke to him and found him quite anxious and available. Nick Katzenbach then spoke to him later in December. In January I was in Mexico and much to my surprise I learned that the President was about to appoint me to this job. Nick called to ask if I would take the job. He said the President had been looking for me and he had covered up the fact that I was in Acapulco. Nick asked me to think about it and let him know on my return. The Chief Judge of the Tax Court, Bill Drennen, was also in Acapulco at the time and I counselled with him. He pointed out that I really didn't have any choice. I suspect he was right. It was a position I did not seek nor have an interest in. I was completely satisfied where I was. The President called me in January, or at least I was asked to come to the White House in January --

B: This would be January of 1966.

R: That's right. At that time he was very troubled, primarily troubled at the time with the criticism of Senator

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[Wayne] Morse, regarding Vietnam. I remember his saying that he just couldn't understand how, if he had the same advisors and the same State Department as John Kennedy did, it was that he was so all wrong when he simply maintained the Kennedy policy in Vietnam. When we got to talking about the Department of Justice, I sensed --

B: You were seeing the President in connection with this appointment, but he initiated the conversation about Vietnam?

R: Yes, he talked at length about Vietnam. Something had happened that morning, a speech on the Senate floor by Morse and it distracted his attention from the purpose of our meeting. When we got back to the central purpose of the meeting -- this was a meeting where there were just the two of us in a small study off his office -- he was concerned about the make-up of the Department of Justice at that time. He was troubled about the allegiance of the Assistant Attorneys General. At that time Nick Katzenbach was Attorney General and there were a number of Assistants who had been appointed under the Kennedy Administration. He made it clear that I was a man that he could trust, a man he would feel safer with in the Department of Justice. He said he didn't care if they were still loyal to Bobby.

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He said they simply had no right to be disloyal to him.

B: If I may ask in fairly blunt terms, did you get the impression that he felt that the existing structure of the Department of Justice was a Kennedy team, and he wanted a Johnson team?

R: That was implicit in what he was saying.

B: Did he ask, or does he on this kind of occasion, ask specifically or hint for a confirmation of loyalty from you?

R: I'm confident that if the loyalty or the capacity to fill the job wasn't there, it was incumbent on me to say, "Mr. President, I can't accept the job." That was implicit in the conversation prior to the appointment. I had no difficulty at all in not having to say anything to the contrary. I felt I could very satisfactorily work for the President and work with the existing people in the Department of Justice.

B: Do you feel, in your own opinion, that his concern in that regard was justifiable? That is, that there was some division of loyalty to the former President?



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R: That is an awfully difficult question to respond to.

He could have thought it very easily and as subsequent events developed, I could see what troubled him. When we subsequently got into the disclosure of the electronic surveillance (bugging) in the [Fred] Black case -- and the dispute between J. Edgar Hoover and Robert Kennedy was surfaced, the Department under Nick Katzenbach attempted to find a middle ground; one that would not embarrass, or unduly embarrass, Robert Kennedy, and one that was nonetheless candid and honest as to the prior activities of the FBI. Although the President could not foresee this type of situation, there was a split loyalty rather than one singular loyalty for his Administration.

B: Is it your opinion that this opinion of the President also referred to Mr. Katzenbach himself?

R: The President had confidence in Nick as Attorney General -- as a lawyer, as the chief lawyer of the Nation. He expressed this by making the appointment. He certainly didn't have to appoint Nick, this was clear. But I think that the concern I expressed before, regarding Nick's approach to a problem that might embarrass Robert Kennedy

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was the type of division of loyalty that the President may have felt at that time.

B: Was this kind of feeling, as regards on one hand the former Kennedy staff members through all levels of the government and [on the other hand] Mr. Johnson and his staff, prevalent at that time?

R: Yes, it was intense in little pockets. Keep in mind I had come into government like tens of thousands of other people who saw the personal opportunities to learn -- sort of a post-graduate degree. In 1958 I came into government and was quite a-political. In 1961, when I became Assistant to the Commissioner, I became privy to many of the policy and political problems of the day. I wasn't necessarily identified as a Kennedy or an anti-Kennedy man. After the assassination, when President Johnson started to make appointments, some of the people who came to government had been on the outs with the Kennedys before and were quite outspoken about cleansing the government from the stigma of Kennedy and the Administration of Kennedy. Just as Mortimer Caplin was a Kennedy man, so his successor, Sheldon Cohen, was a Johnson man.

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My own reaction was that it was an over-reaction on their part; that it didn't really make for good relations amongst people whose primary job was moving government forward; the bickering was a distraction and I tried to avoid it.

B: Was it the tendency of the Johnson people coming in to assume that anyone, even apolitical figures, as you describe yourself, who had been there in the Kennedy years, was therefore a Kennedy man?

R: No. First of all this over-reaction was certainly not shared by all, or even the majority of the people coming in as appointments of President Johnson. But some of those who did come in under Johnson were quite suspicious and tried to identify Kennedy people, as opposed to those who were further down the ladder or apolitical.

B: Again, was there any justification for this suspicion? That is, were there any Kennedy people who were not giving their best to the new Administration?

R: It was not that they were not giving their best for the new Administration, but rather the way the Kennedy Administration had terminated. This caused their sympathies, at least, to be divided. On occasion I heard some backbiting and the

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comment, "This wouldn't have happened under the Kennedy Administration." When problems that had their genesis during the Kennedy Administration came to the surface, some of these people were prone to try to cover them up or bevel off the rough edges rather than to face the fact that a mistake or error in judgment had taken place. To that extent, the Kennedy people that continued in the Johnson Administration had something of a divided loyalty.

B: Actually, sir, you have also seen in your government service a transition from the Eisenhower years to the Kennedy years. Did this kind of situation develop there, too? Between the old and the new?

R: In the beginning there was certainly some suspicion as to actions taken late in the Administration. Many things that took place on January 18, 1961 were suspect simply because of the timing. I suspect the same suspicion will take place in 1969. Decisions that could have been made or should have been made at an earlier date and were made just before the new Administration comes in, are always bound to be suspect.

As far as people are concerned in Treasury, the Internal Revenue Service and in Justice, the Tax Division went through

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quite a pilloring and purging in the early 1950's, when the Eisenhower Administration came in. Some of this grew out of the scandals in the Internal Revenue Service. Some of it perhaps simply because the Republicans had been out of office for 20 years. But when the Administration changed in 1960-1961, there was precious little of this type of recrimination.

B: Was there a distinct difference in tone between the Kennedy and Johnson Administrations? Is that fair or is that too vague?

R: No. I understand what you're saying. Sure the tone was different. They were different men. Perhaps a lot of the "difference" relates simply to the way John Kennedy died and how Lyndon Johnson took office. There is no escaping the fact that the Kennedy years will always be remembered as the time when bright young people came to government and there was a lot of talk -- perhaps the record indicates not as much done as could be justified by the talk. But there was a feeling of moving forward. There was a great cohesive feeling during 1963-1964 when Lyndon Johnson assumed the Presidency. Things were different -- there was no question about it. I'm not sure the "tone" was affected

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immediately. Surface dealings with problems and people were perhaps a little different, no better, no worse, through 1964.

B: Has there been any change -- again the only word I can think of is tone -- Has there been any change as the Johnson Administration has progressed to what is now the tail end of it?

R: March 31, 1968 made an enormous change as to what was going to take place for the rest of the year. There was an immediate deep depression after the President said he wasn't going to run. People saw it as it affected their own problem areas. This lasted for a couple of weeks, and then there was a last spurt effort; various heads of offices saw they had precious little time -- that there were decisions and a limited number of months left; there are things that we wanted to do; each perhaps in our individual areas, but certainly as an Administration. That pulled us together for the time being. But as time ran out, bickering broke out in some areas. The problems of Vietnam were certainly a major distractor even in the area of tax policy. The Administration had to defend tax administration and tax policy against aberrant arguments dealing with our Vietnam policy.

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B: Defend, you mean, before Congress or --?

R: Before Congress, but perhaps more important, before the public at large. The non sequitur of a particular tax position being attached on the basis of our Vietnam policy.

B: Can you give us a specific example of that kind of thing?

R: During my tenure in office, I did a considerable amount of public speaking to bar and accounting groups. While the burden of these speeches was generally technical, the exposure gave me a good feel for how the Administration was doing throughout the nation. In the last year I felt a certain amount of hostility towards government; a pulling away from the government's problem; a lethargy as to the problems of taxation. There was great concern as to how poorly we faced the world in the Vietnam War.

B: May I ask you, as briefly as you can, to summarize the duties, the function of the Tax Division of the Department of Justice?

R: The Tax Division, made up of some 200 lawyers, represents the United States in all the federal courts, the District Court, Court of Claims, Courts of Appeal, and the Supreme Court, in tax litigation. We represent the Commissioner of Internal Revenue in litigation. We try about 1,500

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civil and criminal cases in the District Court, about 500  
in the Appellate Courts, maybe a dozen in the Supreme Court --

B: Those are annual figures?

R: They are annual figures. Our major activity is the formulation, through litigation of tax policy. The government must litigate to develop rules and concepts that require empirical case-by-case elaboration. It is a continuing adventure into the factual twilight zone defining the outer limits of gross income. We seem to be pecking out the line that separates the taxpayer's goal, capital gains, from ordinary income. From the administrator's viewpoint, litigation is necessary to provide case law principles to resolve hosts of administrative audits. Litigation is the cap of a giant iceberg made up of some 70 million tax returns. In pursuing this and in pursuing our criminal work, we try to make the tax system, our self-assessment system work. We try to keep any distractions from fouling the system and causing people to lose confidence in the system. This puts a heavy burden on us. We cannot be merely litigants; we're not out to win every case. We're out for an administrable rule of law.



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B: This implies that behind this there must be a philosophy of taxation. Is that correct?

R: Taxation has no innate philosophy. If one could devine one in the quarter-of-a-million words making up the Code, it would deal with the application of the Code. Tax law is pure statute. The philosophy has to relate to the even-handed application of an unpopular law. If you can show where it is that Congress has made this judgment, a man will pay his tax, not happily, but at least with some understanding.

B: And, I would assume, assuring fairness in tax procedures would be involved in that?

R: That's right. The assurance of fairness is best exemplified in the instances when we have had to confess error. That the United States, having won a particular lawsuit, recognizes it has done wrong and that the taxpayer ought to win. Perhaps that's the greatest moment a lawyer can have in representing the United States is to say, "We've been wrong." It's not a privilege that's afforded private practitioners; their clients won't put up with it. The United States is sturdy and can afford to seek the

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right rule. This is particularly the case in our criminal prosecutions where something more than money is involved.

B: This brings up a question I had in mind. How works the process of deciding what cases to prosecute and not to prosecute?

R: Unlike perhaps any other area of the criminal law, we have a selective process. If burglary, a rape or murder takes place, the police find the culprit. If there's sufficient evidence, the wheels of justice take hold and there is a prosecution. In the area of taxation, the fact that we prosecute 700 people a year doesn't mean that is the extent of the evasion on part of the taxpaying public. I'd hate to even venture the number of willfully false returns filed in the country. We try to insure compliance with the tax laws by selectively prosecuting people in various walks of life to make prosecution act as a deterrent. We have a very, very low rate of recidivism; we want prosecution to deter similarly situated people.

B: You say, "We." In the process of deciding whom to prosecute, who is "we?"

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R: Within the Tax Division there is the Criminal Section made up of 23 top flight criminal lawyers. The Internal Revenue Service makes its criminal investigations and the cases then go through a labyrinth of administrative reviews before the recommendations are forwarded to the Tax Division. The ultimate decision is made in this office as to whether we will prosecute or not.

B: This office -- your office?

R: My office, yes.

B: Does the Attorney General himself or any other officials get involved in this decision?

R: No. It has been my policy to do my job. The Attorney General has delegated this responsibility to me. I keep him advised as to sensitive cases. By that I mean something that he might be questioned by the press or other people in government regarding a case pending in the Department. I tell him what action we've taken but I don't ask his permission to indict or not.

B: In this selectivity of cases to prosecute, are there ever political pressures brought to bear to prosecute or not to prosecute?

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R: I get my share of phone calls from Congressmen. They generally make it clear they have no interest in this man; that they're not trying to persuade us one way or another, but the Congressmen would like us to meet with the taxpayer's lawyer or someone who wants to explain why this man ought not to be prosecuted.

B: What's your reaction to that kind of phone call?

R: Generally, the Congressman is merely trying to assure himself that every proper consideration has been given his constituent. On one occasion when I thought the Congressman was overreaching, I told him we would certainly give his constituent every fair and proper consideration, a standard that we apply across the board, but that I didn't understand what else he had in mind. I told him that if he would state in writing his interest in the case and exactly what he wanted us specifically to do, I'd understand his position better. He never wrote. I usually find suggesting to a Congressman that he give me a letter usually terminates the conversations. From time to time I've been asked by the Attorney General or the Deputy Attorney General regarding the status of a case, or we get

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Congressional mail relating to a pending case. I don't consider that any problem at all.

B: I was going to ask if Congressmen ever sought allies with the Attorney General or with the White House.

R: I had the occasion a few months ago to talk with one of my predecessors, T. Lamar Caudle, who had been convicted in the 1950's for an offense growing out of activities during his tenure in office. He told me how the Department of Justice operated when he was Assistant Attorney General and his relationship with the White House staff and the President. It sounded like we were worlds apart. For example, he asked me how many political speeches I had to make each year. When I said, "None," he said, "Well, that's a wise choice. Things are different." Perhaps the therapy of the scandals in the income tax area have helped make my job so much easier.

B: What Administration was Mr. Caudle in?

R: Mr. Caudle was part of the Truman Administration.

B: Then you don't feel pressured from any direction in this, what I assume is rather a sensitive matter, deciding whom to prosecute?

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R: Not at all. The first experience I had with pressures came from within. Keep in mind, there is a tremendous lobby on the part of the civil servant. Consider, for example, the investigator who has put three or four years of his life into an investigation of an individual who, for lack of a better term, we'll say is a sensitive individual. Perhaps on the White House staff; or a confidant of the President. A good example of this was Sherman Adams. Adams had been recommended by the Revenue Service for prosecution. At the time I was Assistant to the Commissioner and Louis Oberdorfer was Assistant Attorney General. The Tax Division had made the judgment that the case was not suitable for prosecution; that there were technical flaws in the case, and that they were declining the prosecution. There was quite an undercurrent within the Intelligence Division of the Revenue Service, among those who were aware of this prosecution recommendation, that the "fix" was in. Their reason was that at the same time there was pending in the Department of Justice, the prosecution of Dean James Landis. The assumption was Dean Landis would not be prosecuted as a trade for not prosecuting Sherman

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Adams and no one, as a political matter, would be in a position to complain about either judgment.

B: Who was Dean Landis?

R: Dean Landis had been Dean of the Harvard Law School. At the time of the prosecution of Dean Landis, he was special counsel to President John Kennedy; a trustee of the Kennedy Trusts; had, under the Roosevelt Administration, been chairman of both the SEC and the Civil Aeronautics Board. He was certainly one of the luminaries of the 1930's and the 1940's. As it turned out, Dean Landis was prosecuted. He committed suicide soon after he was released from confinement. I could well imagine how my predecessor must have been tormented; not necessarily because the case was a sensitive one, but because Dean Landis was a sick man. This is an instance of a man who, had he not had the notoriety of Dean Landis, probably would not have been prosecuted. The judgment to prosecute was doubtless made because there was no alternative.

B: Then you must not only do right but appear to do right?

R: That's right.

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B: May I ask a clarification question here? In this matter of initiating prosecution, can or does the Internal Revenue Service act on its own in this regard?

R: They initiate the investigation, but before the case can go to a grand jury for indictment, it has to be concurred in by our office. We would then prosecute the case if an indictment is returned.

B: Then the Internal Revenue Service office would have to make the judgment too, I assume an independent judgment, as to --

R: That's right.

B: All of this has brought up the Bobby Baker case which would involve all these areas of sensitivity. Have you participated either in the Internal Revenue Service or in this position in the prosecution of that one?

R: When I was Chief Counsel of Internal Revenue, the Bobby Baker case was pending in our office. Before a case is referred to the Department of Justice, it must be concurred in by the Chief Counsel. There were really two separate investigations of Baker. One was conducted by the Internal Revenue Service -- a pure tax investigation; the other was a special grand jury that was being conducted by the



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Department of Justice. William O. Bittman was the special prosecutor in that case. At the time the Revenue Service investigation had concluded, it was my judgment that there was not a sufficient case, based on the facts the Internal Revenue Service had developed, to warrant recommendation for prosecution. We also knew, however, that the grand jury had developed additional facts. We sent the case over to the Department of Justice, not with a recommendation of prosecution, but rather so that the information obtained through the grand jury could be co-joined with the evidence the Revenue Service had obtained.

Soon after that, the President appointed me Assistant Attorney General and I came over to the Department of Justice. I saw both sides of this case. The Baker case was being handled by the Criminal Division as opposed to the Tax Division; this was unusual.

B: Is there any particular reason why it was in that Division?

R: I am aware of some of the background. The special prosecutor in this case, Bill Bittman, had been an attorney in the U.S. Attorney's office in Chicago and apparently distinguished himself in the Jimmy Hoffa case during the Kennedy Administration. He had been asked to come to Washington to work

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in the Criminal Division by Jack Miller who was then the Assistant Attorney General for the Criminal Division during the Kennedy Administration. Miller promised Bittman that he could conduct the grand jury investigation of Baker. At that time I believe there were other than tax offenses that were being considered. Miller left soon thereafter and Fred Vinson became the Assistant Attorney General in charge of the Criminal Division. Bittman had an unholy control over the case and everyone in the Department was reluctant to either transfer the case to the Tax Division or actively supervise Bittman's activities. I spoke with Nick Katzenbach when I first came to the Department and suggested that jurisdictionally the case belonged in the Tax Division and that I didn't understand why it was in the Criminal Division since it was a tax prosecution. The history of Bittman's relationship with the case was then explained to me. I indicated nonetheless I wanted to have the Tax Division participate in the decisions regarding any tax offenses that might be alleged. An analysis of the case would, I think, bear out that the case was primarily a tax case and the other offenses

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charged were mere outgrowths of the tax case. Katzenbach didn't necessarily want Bittman to prosecute the case. Ramsey Clark, who was Deputy Attorney General, felt he was in no position to interject himself in this jurisdictional dispute because of his relationship with the President. The Attorney General and his staff were extremely nervous at the time that any change of prosecutors might be construed as an effort to appease the President. The assumption was if a shift took place and the case were lost, that the shift was intended to bring about that result. The dead hand of inaction took hold and the case was primarily controlled by the Criminal Division; the lead prosecutor was Bittman. We had one of our attorneys participating. I suspect Bittman even had his reservations about my integrity. When I was Chief Counsel, I had a run-in with him regarding the Black case when I refused to start a second criminal investigation of Black for failure to pay income taxes which he had been convicted of attempting to evade.

B: Did Bittman stay with the case?

R: Bittman stayed with the case to its conclusion.

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B: Is he still in the Criminal Division?

R: No, he's in private practice here in Washington today.

B: When did he leave? Do you recall just offhand?

R: Right after the conviction of Baker.

B: In other words, again, the political implications, at least in the sense of appearances, were involved in the thing.

R: Oh, yes -- the way the case was handled and who it was handled by was clearly abnormal. It was outside of the way it would have been handled as a normal tax case -- and while people were not necessarily satisfied with the way it was being handled, I think they refrained from taking action less it be misconstrued as a direction from the White House.

B: Were there any sort of directions from the White House, one way or another about the case?

R: I am completely unaware of them. When I came to the Department, the President made reference to the Baker case in a fashion. He contrasted the effort being made in the Baker case with the lack of apparent effort regarding a Senator who he believed was in violation of the conflict of interest statutes. At the time, I remember I had a

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picture taken with the President in his study. He inscribed it "without fear or favor and within the Bill of Rights." I construed this as a flat-footed mandate to simply do the right thing.

B: You were describing the photograph of you with the President.

R: Yes.

B: Then you, in your connection with the Bobby Baker case as you've described, felt no particular political pressures other than making sure that there was no implication of political pressures?

R: That's right.

B: I gather that the beginning of the Bobby Baker case was in the Internal Revenue Service. Do you have any knowledge of what went on there in the decision to begin prosecution of Baker?

R: There had been a story in the press that this was a Robert Kennedy-instigated investigation. I saw no evidence of that. The Revenue Service special agents read the newspapers, like anyone else, and if they see something that has the potential of generating unreported income, they may well start an investigation. The investigation as I recall,

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had a very neutral beginning.

B: Have there been any other individual cases in your experience here that have been of particular interest or importance?

R: I think what happened in the Black case is quite significant. To roll back in point of time, Senator Edward Long of Missouri had the Subcommittee of the Senate Judiciary looking into invasions of privacy. He had stumbled into what turned out to be a prevalent practice within the government -- the use of electronic surveillance and bugging equipment in organized crime cases. To this day, I am unable to find a definition of organized crime.

B: Within government: within the Department of Justice or the IRS?

R: His Subcommittee had found this practice prevalent within the Revenue Service and to a lesser degree within the Post Office. He found other invasions of privacy in the Food and Drug Administration. Senator Long had never taken on any investigation of the FBI, however. The Revenue Service appeared before his Subcommittee -- I was Chief Counsel at the time -- and it was a rather traumatic situation. The Intelligence Division of IRS denied vehemently that they

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had ever engaged in any bugging or wiretapping. As it turned out, the record would eventually demonstrate that it had been a rather pervasive practice within the Intelligence Division in various districts throughout the country. The group of agents from Pittsburg who were being called to testify came within a whisper of giving perjured testimony. At the last minute they told the Commissioner and the Chief Counsel that their initial denials weren't true; that they had, in fact, engaged in bugging. Then the story began to unfold. This was a frightening picture of the means justifying the end.

B: Precisely, when is the time of this?

R: This was in 1965. In the spring of 1965.

B: This was going on without your knowledge as Chief Counsel?

R: That's right. I remember my office was to represent some half dozen witnesses before the Subcommittee. They had made all the appropriate protestations of innocence. Somehow I just couldn't believe that they were all so virginal. The record of convictions had been overwhelming in the Pittsburg area and it appeared that they had done a very superior job. At least that is what the paper-record

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looked like. I had nothing more than a visceral reaction. But I felt we weren't getting straight answers. I remember sending an extremely able lawyer to Pittsburg to interview the special agents and he, Bob Spatz, reported that they "were clean." I teased him -- I looked to see if he still had his shoes on -- because I just couldn't believe they were as clean as they claimed. I pressed and pressed and finally they did come up with what turned out to be the truth -- the special agents had been extensively engaged in the practice of bugging and wiretapping. There were those in the Treasury who wanted to terminate the practice, but not to publicize that it had taken place. Senator Long was quite anxious to expose the practice quite extensively. The issue eventually was presented to the President. He refused to support the Treasury's effort to bury this. The President issued an executive order which cleared the air, if there was any doubt in the minds of any people. He said that bugging and wiretapping was to terminate forthwith.

B: Did the President make a distinction as regards the uses of wiretapping, that is, the type of case? Did that intend that it should not be used, or in only cases of national security?



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R: It was subsequently refined by the President to exclude national security. The work the Internal Revenue Service was engaged in had nothing to do with national security. I never understood how, as a matter of law, an exception could be made for national security. But, since my work did not include national security, I could not be heard to object.

B: Did the Justice Department have anything to do with the drafting of that executive order?

R: Yes. The national security exception was drafted in the Department. The Long Committee's inquiry related to the Revenue Service. It seemed that the Senator's inquiry was drawing to a close. The Revenue Service had been exposed. It wasn't until April 1966 that the real trauma took place. The Tax Division successfully prosecuted a Washingtonian by the name of Fred Black, an associate of Bobby Baker, for tax evasion. Black's conviction had been affirmed by the Court of Appeals for the District of Columbia. Black had filed a petition for a writ of certiorari in the Supreme Court. It was opposed by the Tax Division and the Supreme Court denied certiorari.

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During the pendency of the petition for certiorari, my second assistant in the Tax Division, Dick Roberts, came in to see me one day and asked me to read some materials he recently obtained from the Criminal Division. It was apparent that Fred Black had been the subject of bugging by the FBI. I asked him to get the materials together and come in to see me on a Saturday, the next day. He had received a phone call from the Criminal Division which had triggered his concern. The Criminal Division was, at that time, involved in the preparation of the Baker case for presentation to a Grand Jury. The Criminal Division was apparently aware of the fact that the FBI had a bug in Fred Black's suite at the Carlton Hotel in Washington. Black and Baker were very close, confidants and associates, and Baker spent a great deal of time in Black's suite.

With this information, I asked the FBI to give me the logs, or whatever transcripts existed, of these conversations. The Bureau was very upset about this request of mine. They maintained that the FBI had the Attorney General's authorization to engage in this eavesdropping. It soon became quite apparent that Fred Black had been

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overheard discussing his tax evasion case with his lawyer. This was an outrage. It was an anomolous situation. From what I read, I knew that none of the overheard information -- or at least I had every good reason to believe that none of this information -- was used in our prosecution. But it became quite apparent that the fact of the surveillance had to be told to the Supreme Court. The Court still had jurisdiction over the case for ten days after the denial of certiorari.

B: Does the FBI initiate such things on its own, or have you any knowledge of who would have requested, if anyone, the surveillance?

R: Perhaps we ought to leave that question for the moment and put it in the context of the events that took place in the Black case. With this information and pretty secure in mind as to what it meant, I went to see the Attorney General. I told him that I thought we had to advise the Supreme Court of the FBI's bugging.

B: I've lost track of the dates here. Would this be Mr. Katzenbach?

R: Nick Katzenbach in April of 1965. He had no difficulty at all in agreeing that we had to bring this to the attention

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of the Supreme Court. He also recognized that the case might be dismissed. At best it would be sent back for a new trial. The problem came about when we tried to formulate a memorandum which, on the one hand, would tell the Supreme Court what had taken place and on the other, would still allow us to live with the FBI. The FBI had taken a very simplistic view. Mr. Hoover, through Cartha DeLoach, said, "None of this information was relevant to the prosecution; therefore, it wasn't incumbent upon us to tell the Court." Mr. Hoover was unalterably opposed to making the disclosure. We had numerous conferences with the Attorney General; the then Solicitor General, Thurgood Marshall; and Deake DeLoche of the FBI. We worked for more than a week trying to formulate a document that would satisfy the Bureau and still meet with our requirement; that we tell the Court a candid tale of what happened. It was during this period that the FBI took the position that they had been authorized to engage in wiretapping and bugging. They then brought in documents, to show that Robert Kennedy had authorized such activity. Hoover eluded to affidavits from a number of Special Agents of the FBI who were present in New York City when Robert Kennedy, as Attorney General,

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visited the New York City office and listened to tapes of various microphone surveillances. Hoover pointed out that he could or should have realized where the tapes came from and as far as the FBI was concerned, the Attorney General was then on notice of the bugging.

The case the Bureau made was extremely circumstantial and very sketchy. They didn't have any one document indicating Robert Kennedy authorized the wiretapping, the bugging or any form of electronic surveillance. But, they were determined to drag the Senator from New York into the case.

B: At that time did the Attorney General have the authority to authorize such?

R: No one has the authority to authorize a criminal trespass. The Constitution, Article IV, says that the public is to be safe from unreasonable searches and seizures. Breaking into a man's hotel suite or his home and planting one of these instruments is a trespass, perhaps even a burglary, depending on what else takes place. It is dead wrong and neither the Attorney General nor the President have the power to authorize such illegal conduct. The exclusionary

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laws of evidence are, however, the only sanctions that are really involved in most of these cases. The government can't use information to prosecute a man obtained from such an illegal search. There are statutes prohibiting warrantless searches and I assume the FBI has violated this penal statute.

B: You've used the phrase several times -- the Bureau -- are you meaning J. Edgar Hoover?

R: In this Department there is no other Bureau other than J. Edgar Hoover and his FBI.

B. I meant that when you were talking about satisfying the FBI, in this case I assume you mean that Mr. Hoover himself --

R: Mr. Hoover, himself, certainly. Although he never attended any of these conferences, his memoranda clearly represented his views and the people that were his emissaries in these conferences were clearly empowered to take the positions they did by J. Edgar Hoover. It was indeed fascinating to see the Attorney General in shirt sleeves, but Mr. Hoover absent.

The tensions were enormous during this period of time. As I subsequently learned from reviewing the FBI files relating to this time period, Deake DeLoche was going

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over to the White House and talking to the President about our position, undercutting the Attorney General, and later undercutting the Acting Attorney General, Ramsey Clark.

The Bureau was trying to make its case in the White House. DeLoche would talk to Marvin Watson, according to the memorandum he left in the file. On occasion, he spoke to the President about our "unrealistic position."

B: Do you have any knowledge of the reaction of the President or Mr. Watson?

R: We never got an order from the White House not to file our confession of error with the Court or not to take the position that we took. The negative speaks loud and clear. We were not interfered with. This trauma created by this situation continued for quite some time and indeed still goes on. We've discovered numerous cases where the FBI has engaged in bugging. We made disclosures in as many as 50 cases that were in the courts. Other cases that were tainted beyond hope never went to trial. I can't think of any one incident during my tenure in the Department of Justice that has been as divisive, traumatic, or fraught with heat.

B: Does that have anything to do with Mr. Katzenbach's leaving?

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R: I don't know. I would say that our relations with the FBI today -- while certainly under normal governmental standards, you would have to say are poor -- are a helluva lot better than they were when Nick was A.G.

B: Our -- you mean the rest of the Department of Justice?

R: The Department of Justice in its totality, that's right. At best and under the best of circumstances, you'd have to say they're poor relations. The memoranda writing that was going on in the spring of 1966 was intense, fierce, and made for a very, very wide gulf between the FBI, a subordinate unit of the Department of Justice, and the Attorney General.

B: Do you as head of the Tax Division have any separate investigative powers or do you have to rely upon the FBI for any investigation you need?

R: All of our investigative work is done by the Internal Revenue Service. Normally, we have precious little dealings with the FBI.

B: What was the ultimate outcome of the argument over the Black case?

R: The memorandum confessing error was filed with the Supreme Court. Thereafter, the Supreme Court asked six questions



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dealing with the background of the bugging. This created additional hard feelings because the question of authorization was asked. The dispute between Mr. Hoover and Robert Kennedy then became public. On one occasion I went up to see Senator Kennedy to tell him, at an early date, what had taken place and what position the Department of Justice chose to take in this dispute. I always felt that Nick Katzenbach vainly was trying to be the peacemaker. He was trying to develop a position that would not be unfair to either the FBI or Robert Kennedy; a position that took great diplomacy. Unfortunately, neither faction could see Nick's position as being justified. As a nonpartisan in the debate, I felt that Katzenbach was attempting the impossible.

B: What was Senator Kennedy's reaction?

R: He was flat-footed in his denial. Perhaps he was over-reacting at times, thinking that the administration was going to dump all of this on him. This was wrong. That was not the position that we were developing. This caused a congealing of the Kennedy-anti-Kennedy forces, within government. The Kennedy people were protective; the anti-Kennedy people were hardly solicitous of anyone's feelings.

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B: Was it ever made clear whether or not Senator Kennedy, as Attorney General, had directly or indirectly authorized the use of wiretaps?

R: After reviewing a great deal of materials, it is my best judgment that he never affirmatively authorized the bugging in the Black case; that he probably was aware that the FBI was engaged in electronic surveillance in other cases; and that he knew that it was taking place in internal security cases. I felt the people in the Criminal Division, during his administration, knew that it was going on and denied it.

B: Incidentally, was the Black case thrown out because of your memorandum?

R: The Black case was remanded for a new trial. There was an exhaustive hearing by Judge [William B.] Jones here in the District of Columbia. At that time all of the FBI files relating to the Black case were required to be turned over for Judge Jones' inspection. This again violated a precedent of the FBI. Their files had never been turned over to anyone under any circumstances. And it was at that time, before we turned them over to the court, that I had to read the files and learned of the FBI's views of the earlier

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incident where in their memoranda they indicated trips to the White House. The case eventually went to trial and the jury acquitted Fred Black.

B: Do you feel this wiretapping issue is in any way settled, or do you feel this is going to be a continuing philosophical struggle, if nothing else?

R: One chapter is closed and a second is to start. Part of the law and order debate [in the 1968 Presidential campaign] goes to the Administration's soft position on wiretapping. The Administration is opposed to using wiretapping authority given it by Congress in the Safe Streets Act of 1968. This has led the Republican law and order people to use this to indicate in some fashion that the reason people are mugged on the street is because the Department of Justice won't authorize bugging and wiretapping today.

B: I gather you share what you say is the Administration's view?

R: Very much so. It's a pernicious practice and I'm not at all sure it serves a useful purpose in most cases. Certainly in tax cases it serves virtually no purpose.

B: I was going to ask if you thought that, philosophy aside, there was any practical use.

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R: As a pragmatic thing, it's hard to conceive that man, even in the quiet of his own bedroom, would recite the items of income that he has left off his return or other frauds that might be committed. Certainly, there are situations where fraud would be identified. But the price is too high.

B: Another thing that your story has brought up. It's pretty well common knowledge that the Federal Bureau of Investigation operates as kind of an independent force. Is that the correct view?

R: That is very accurate.

B: Do you feel that is not the proper scope of operation for the FBI?

R: Well, I have mixed feelings. As a conceptual matter, the Bureau should clearly be responsive to the head of the Department. In that context the FBI should be responsive to the Attorney General. They're not. I'm not at all convinced, however, that the FBI need be part of the Department of Justice. I think the Department might better be served by not having bureaus such as the FBI as part of its operation.

B: You mean that you feel the FBI should be an independent agency? In theory, as well as fact?

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R: In theory as well as fact, yes.

B: Do you feel perhaps that the FBI ought to be kept under a little closer string by, I don't know of any subtle way to phrase this, a more frequent turnover in directors?

R: At a bare minimum. The Bureau is a classic example of a cult of personality and it does not augur well for democracy.

B: To move into another aspect of your Division's operation, does the Tax Division participate in the drafting of legislation pertaining to taxation, or anything else?

R: Not to any degree at all. Tax policy has always been the prerogative of the Treasury Department. We make recommendations to Treasury frequently as a result of weaknesses we see in the Code as an outgrowth of our litigation. The tax fraternity in Washington is a close one, so that the Assistant Secretary for Tax Policy works closely with the Commissioner, the Chief Counsel and the Assistant Attorney General of the Tax Division, and seek their views in legislative matters on an informal basis.

B: This kind of close work you describe among the various people charged with aspects of tax operation, is this on a formal or an informal basis?

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R: It's informal. We have no hesitancy to call one another or write one another if we see problems in each other's jurisdictions that might better be handled in another fashion.

B: When the Treasury Department is contemplating a draft of tax legislation, do they get in touch with you?

R: On occasion they'll talk with us, certainly. If it deals with any area that we're currently involved in in litigation, Treasury definitely will talk with us. If it's areas where we've had some personal experience, they'll talk with us.

B: Then do you, as head of your Division, or anyone else in your Division, have any direct relationships with Congress in hearings on tax legislation or anything?

R: From time to time I've been up to the Hill to testify. Most recently before the Judiciary Committee on a bill to make the Tax Court a Constitutional court. At that time I tried to persuade the Judiciary Committee to undertake a reform in the manner in which tax cases are tried. This is a major project with me; something I would hope that would be carried through in the next Administration.

B: What would you like to see done?

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R: Right now we have a trifurcated system. Tax cases may be litigated in the Court of Claims, the Tax Court and the District Court; each of these courts has its own peculiar procedures. Two of the courts require that the full tax be paid before you litigate; the other one requires that you file a petition within ninety days or else you have to pay the full tax. The result is a conglomerate of procedural hurdles that makes for complex litigation. It doesn't serve the purposes of the country at all. It works to the disadvantage of a poor man who cannot pay his full tax and is thereby precluded from a jury trial. In sum, it's simply an historical accident. Government would be much better served if we cleaned away the procedural underbrush.

Senator [Joseph] Tydings is taken with this approach and will hold hearings in the 91st Congress.

B: Is it your suggestion that the procedures be standardized and presumably handled by one of those courts?

R: Yes. I think that if not one, two, but certainly not three of the courts --

B: Do you have a recommendation as to which one?

R: In the long run, we would be better off with the district courts. They're spread throughout the country, and more

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accessible by the populace to hear tax cases.

B: Has there not been some criticism, particularly within the bar, that the Tax Court is entirely too close to the Internal Revenue Service?

R: That's right, and I think, certainly if we are to have a two-court system, the Tax Court must be completely divorced from the appearance of association with the Internal Revenue Service. Right now the Judge's chambers are in the Internal Revenue Service Building. While, in fact, the Tax Court is an independent agency of the Executive Branch, nonetheless the public considers them to be an extension of the Treasury Department. That's not true; they have an independence of their own, but nonetheless if the public believes that, the court can't engender the confidence in its decisions that it should.

B: Also, you were talking earlier about the practice of asking the advice of those people involved in prosecuting tax matters about the composition of the Tax Court.

R: That's right. There's no question that the practice has brought more former Treasury people into the Tax Court from elsewhere. Our whole system of appointing judges is questionable. Just as Treasury recommends its tax lawyers



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for appointment to the Tax Court, the Department of Justice places many of its U. S. Attorneys on the District Court bench and its Assistant Attorneys General on the Courts of Appeal.

B: Another aspect of the work of your Division: I understand that people from your Division participate in the strike force concept against organized crime. Is that correct?

R: No, that's not correct. The Criminal Division has within it the organized crimes section. They obtain investigative aid from the Internal Revenue Service, as well as other government agencies. About 60% of the Organized Crime Section's cases turn out to be tax cases, and when their case is prepared and referred to us --

B: May I interject here -- Is that because that's the clearest way to get a case on those involved in organized crime?

R: That is their view, yes. I don't share it. I think it a misuse of our tax laws to bring prosecutions under the tax laws when, save for the fact it was an O.C.D. case, the case would not go forward because of its weakness.

B: You mean you feel that they are using tax laws to punish people for what are other crimes covered under other statutes?

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R: That's right. There's something unhealthy about it. We only prosecute 700 cases a year and they are brought for the purpose of deterrence.

You don't teach foxes not to eat chickens. As I said earlier, there is no definition of an organized crime case. At times I think the test is if your last name ends in a vowel, you're subject to being in organized crime. In any event, I assume we are dealing with hardened criminals who recognize that the tax laws exist and they can't comply with a law requiring the statement of their true earnings and source of earnings. To them a tax prosecution is simply one of the risks of business. You don't deter other criminals from crime or from filing false returns by prosecuting a handful each year. More important, we're trying to make the tax system work better. When we prosecute a "normal" tax evader, the theory is that similarly situated people will file better returns. If we prosecute a hoodlum, (a) hoodlums don't file better returns, (b) other people have no empathy for the prosecution. They say, "Fine, get those guys," but it has no effect on the revenue system. This is my greatest concern. The tax system isn't being satisfied by this kind of prosecution. From time to time we have been importuned to prosecute an

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organized crime personality simply because the available evidence doesn't support prosecution for whatever the crime fighters feel he "really" did. I have refused categorically to lower our standards for prosecution simply because the guy's last name ends in a vowel.

B: Has this situation created any friction or difficulty within the Department of Justice here? That is between you and the head of the Criminal Division?

R: It has and I think that we've both made our positions clear. I think unfortunately for my view that the cry for law and order and crime on the streets have become significant political issues and the Department has turned to more vigorous organized crime activity. But rather than work with the local police and help the local prosecutors do their job, the prevailing view is for the Feds to do it for them. We develop a gap between the local prosecutor. From time to time the local prosecutor has prepared to go forward and the Department of Justice jumped in and prosecuted their prey. This makes the local prosecutor look like a fool, like he wasn't doing his job. Good examples of this can be seen in the so-called inter-state bribery cases in

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New York City brought against Lindsay's Commissioner Marcus. The local D. A. had an investigation underway when Bob Morgenthau indicted Marcus. Same lack of cooperation was seen in Fairfax County when indictments, of a local nature, were brought against County Supervisors. Somehow that isn't how I see the Department of Justice's relationship with local government.

[This is the beginning of the second tape of the interview with Mr. Rogovin]

B: We were talking about the organized crime campaign. Have you additional thoughts on that?

R: In this week's Newsweek magazine, I saw a short article about Ramsey Clark where an anonymous justice official said that Clark's fight on organized crime was not unlike having Dr. Spock as head of the Pentagon. This is an example of the hawk-like approach to the 20th Century problem of crime found in some offices of Justice. These fellows would like to see Federal jurisdiction in the criminal area expanded with, in effect, a national police force. I have felt that Ramsey Clark has been an outstanding Attorney General and he is cognizant of some of the problems that I've been troubled with. In the area of organized crime,

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I think there is a serious question regarding the participation of the federal government. The Department is in a quite ambivalent position; part of the Department of Justice is involved in making grants to local government to improve their law enforcement, while another part of the Department of Justice is looking at local enforcement and trying to make cases dealing with corruption and malfeasance and misfeasance of the same policeman. This naturally creates mistrust and lack of cooperation. The largest hope of quelling crime has to be with local law enforcement. We can't have a national police force. We certainly don't have the capacity here in the Department of Justice to stamp out crime, as the public at large would like to see it done.

B: In the normal operations of your Division, do you get involved in this question of assistance to local law enforcement offices?

R: No, not in the Tax Division. As Assistant Attorney General, I participate in staff meetings and from time to time have lobbied for legislation the Department is interested in.

B: In your remarks on organized crime, I've gotten the impression that you feel that the current public concern about law and order has led the Justice Department into paths it really should not be into?

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R: I think that's pretty much the case. Organized crime has been the plaything of the press. Once the Department wanted appropriations to "stamp it out," it got on a treadmill and the name of the game became statistics. If any Federal investigative body wanted a bigger appropriation, they had to join in the search for organized crime. To justify the past, silly little cases were classified as major victories. The whole business is like body-counts in Vietnam.

B: The publicists you were referring to. Who are they?

R: Well, to begin with and to get any program in government moving, you have to issue press releases. The press releases then generate more press releases and more articles about organized crime, and it becomes a major fixation in the eyes of the public. And then at the end of the year, someone says, "Well, just how have you done?" And then we get into the statistical rat-race of counting convictions. And I'm afraid that some of the convictions that show up in the statistics are nothing more than street-corner bookie-types that hardly merit the dignity of the sovereign swooping down. These are problems that local government should handle.

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B: Does this by any chance have a more direct effect on the Tax Division; for example, when the time comes to apportion the Budget of the Justice Department, does perhaps the Criminal Division get more funds than the Tax Division?

R: I suspect we get more but that's not really relevant. I'd like to think that this is not an effort to feather our own nest. We really are not involved in much of organized crime, and are very much involved in the tax aspect of it.

B: The "we" in those sentences refers to the Tax Division?

R: That's right.

B: Another area of activity you mentioned in a private conversation when the machine was off, the Las Vegas skimming cases -- was that another majority area in the activity in your Division?

R: That was a good example of the interplay between [the] organized crime [section] and this Division. The Internal Revenue Service made, at the behest of the organized crime section, investigation of skimming. This became a tax case when the skimmed money was not reported. Various investigators for a month watched crap tables in action in casinos in Las Vegas.

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B: What investigators would those have been?

R: IRS investigators. As money was dropped by the croupier into a black box, a locked box, the revenue agents kept count of the dollars that went into the box with matches or toothpicks or counters. Then 18 months later, to make the story simpler and shorter, the IRS figures were matched up against the figures of the hotel. Then IRS discovered the hotel had been short-changing the federal government in reporting its earnings. These were quite significant cases because the concept of skimming had been well-established back in the 1930's when the first legalized gambling took place in Nevada. The hotel casino operators had been by-passing the tax return and ended up with tax-free money. These cases were referred to the Tax Division by the Revenue Service --

B: The Revenue Service initiated this process then?

R: They initiated it at the behest of the organized crime section of the Criminal Division. The cases were pretty skimpy. The technique, as I've described it, even full-blown, wasn't a heck of a lot more substantial than literally moving coins or toothpicks or matches from pocket to pocket. The opportunity not to have gotten



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an accurate count was quite real, and there were quite a number of impediments in successful prosecution. We were very chary about the cases. We conducted an extensive grand jury and bolstered the case substantially and eventually were convinced that we had a case, albeit a close one, that could be brought to trial.

B: May I interrupt here to ask a technical question? Can the Tax Division assemble a grand jury in cases like this?

R: Yes.

B: From whom is such a grand jury formed?

R: We sent two prosecutors to Las Vegas, the jurisdiction in which the alleged crime took place.

B: You would assemble what is technically a federal grand jury?

R: A federal grand jury made up of residents of the district there. We went forward and obtained indictments. The indictments were against executives of three hotels in Las Vegas.

B: Do you recall the names of the hotels?

R: The Fremont, the Stardust, and I forget the third. At the same time there was a civil lawsuit that was brought by a number of gamblers and others in Las Vegas against the FBI.

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The FBI had done a substantial degree of electronic surveillance in Las Vegas. This became known to the gambling establishment and suits for the invasion of privacy were brought in state court.

B: Is the FBI activity independent, or connected with the Internal Revenue investigative functions?

R: The organized crime section had directed both the FBI and the Internal Revenue Service to engage in investigations in Las Vegas dealing with skimming. These investigations were parallel and perhaps overlapping, but the tax investigation dealt simply with the technique I described for determining skimming. The FBI's jurisdiction was much broader, and it dealt with who the owners of hotels were in fact; who was getting the skimmed money; and other information dealing with gambling in Las Vegas.

B: And the FBI used electronic surveillance?

R: Yes, they did.

B: At the authorization or request of the Criminal Division?

R: That's not clear. This goes back to the question of authorization. In the eyes of the FBI, implicit from prior activities within the Department of Justice, they claimed they had authority.

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B: When were these first steps? What year?

R: Probably in the early 1960's. I don't think they were much earlier than 1960.

We had two separate court actions going on. We had our indictment for skimming in the Federal District Court [the Tax Division's indictment]; and there was the private lawsuit brought by 20 or 30 people in Las Vegas for the invasion of their privacy pending in the State Court. There had been numerous efforts on the part of the Department in defending the FBI to try to terminate these lawsuits. One of the basic issues in the civil case that troubled Ed [Edwin L.] Weisl [Jr.] of the Civil Division (they represented the FBI), was whether or not the FBI had given the agents authority to bug or whether this was a frolic and detour separate and apart from their responsibility. As it turned out, the lawyers representing the gamblers in the civil suit were in close contact with the lawyers defending the main parties in our tax case. There was an attempt made to make a joint settlement: that if we dismissed our tax cases, they would dismiss their civil suit. It should be noted that the civil suit was a source of great embarrassment to the Department.

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I maintained a very singular position: that the defendants ought to do whatever they wanted to do as far as the civil suit was concerned, and the Civil Division ought to do what they thought was right; but we were going forward with our criminal prosecutions. As it turned out, the people bringing the civil suit dismissed their suit. I think there may have been some small settlement made. One of the other defendants in the suit besides the FBI agents was the telephone company. I believe they may have paid some money to obtain the dismissal. During the same period of time we accepted the pleas of a number of these gamblers to filing the false returns relating to the skimming. The District Court subsequently gave rather light sentences and there was quite a lot of heartache on the part of people in [the] organized crime [section] regarding the sentences. They told the press we had allowed the cases to be disposed of that way as part of some unholy deal. We made our judgment based on the general practice of the Tax Division that if a person were to plead guilty to one major charge, we would dismiss the others; that's a practice that we've followed for many years. We also recognized that a trial

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of these cases might well end up in acquittal. Then a strange phenomenon took place; there were those in government who felt that it didn't really matter whether we got a conviction or not, the important thing was to expose the skimming and to point out that it actually existed and this could only be done in a full trial. The former Governor of Nevada, Grant Sawyer, had taken a very affirmative position that there was no such thing as skimming; it became a very significant issue in his campaign and may well have led to his defeat as Governor.

B: You mention those in government. Do you mean with the Justice Department here or within the Administration generally?

R: Both in the Justice Department and in the Internal Revenue Service; the organized crime people [in the Justice Department] were sick about our accepting the plea --

B: You mean that the organized crime people felt that you should have prosecuted harder or gotten a heavier sentence?

R: That's right. Of course, we have nothing to do with sentencing. That's up to the judge, and they took issue with the sentence, which is really another sort of footnote.

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My own reaction is that no self-respecting judge is going to punish a man for what wasn't proven in court, but he's only there to punish him for what the man was convicted of. I agreed that the sentences, no jail time and small fines, were very light. But I wasn't exercised about it.

B: In this circumstance, in what was pretty clearly the offer of a deal, to cancel the civil suit in return for cancelling the tax suit, did you and the head of the Civil Division here discuss that directly and --

R: Yes, there were discussions on a pretty regular basis. We [the Tax Division] maintained what I thought was the proper position: that it really didn't matter what happened in the civil suit, as far as we were concerned -- we were going to take independent action -- and that if they offered to settle the case civilly, it wouldn't deter us or encourage us one way or the other. We meaning the Tax Division.

B: Does this kind of intramural discussion among the several Assistant Attorneys General with their separate responsibilities ever get acrimonious?

R: Momentary acrimony, but I think after a few years we're all pretty predictable about what our positions will be and life goes on.

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B: Does it ever get to the stage where the Attorney General or his Deputy have to referee?

R: Oh, yes. As an outgrowth of the Black disclosures, there was a wide split within the Department as to whether we ought to be making disclosures in future cases, and how we'd go about it. The Attorney General formed an ad hoc committee made up of the Solicitor General, then Thurgood Marshall, and now Dean [Erwin N.] Griswold; Fred [M.] Vinson [Jr.] of the Criminal Division; Walter Yeagley of the Internal Security Division; and myself. And we would review each of these cases as to whether disclosure had to be made and how we could go about doing it. I was a dissenter; I took the position that if there had been bugging, irrespective of what was Overheard since we were in no position to determine whether it was relevant or not, we should turn this information over to the defendant. The majority of my conferees didn't agree with this and that position stood until the Supreme Court told us --

B: You mean, your position?

R: No, the majority position, that the Department would make an independent judgment as to relevancy of what was overheard. That stood for two years until recently, the

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Supreme Court said, "No," we had no capacity to make that decision. We're currently in litigation in the Supreme Court attempting to further refine what the rules of disclosure ought to be. I use this as an example -- these meetings were held once or twice a week, and after a while it was really unnecessary to state positions. There were no arguments, everyone knew each other's position, and we just voted and moved on to the next case.

B: You mentioned earlier that your Division has 200 lawyers.

R: That's right.

B: One of the questions of interest, I think, is the recruiting of good men for government service. Am I correct that you have the primary responsibility for finding 200 good tax lawyers to serve in the Tax Division?

R: That's right. In some respects it's a very easy job. We have 20 applicants for every position in the Tax Division.

B: Are most of these young men fresh out of law school?

R: Yes. Our Division, as opposed to elsewhere in the Department, requires that anyone who comes with us, agrees to stay for four years. We're in a buyer's market and can make that request. Taxation is a very exciting area of commercial law. It's the very lifeblood of commerce today, and it's also



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a very lucrative area for private practice. We're able to find topflight people to come in for four or five years and serve us well.

B: Based on my own awe before the complexities of tax law, is this the best postgraduate school available?

R: This and the Chief Counsel's office. The one thing that this office offers that is found nowhere else is litigation. That's all we do. Try cases. We try them all over the country. We file more appellate briefs, than all the rest of the Department of Justice put together. The other Divisions of the Department are not involved in a fraction of the litigation that we are.

B: Can you offer these young men attractive salaries?

R: As attractive as anywhere else in the Department of Justice. We've been able to, for the first time, compete with private practice. We're starting a young man just out of law school, at \$10,000 a year, which in my short stay is twice what was offered when I came into government in 1958.

B: I notice in the newspapers that major firms, particularly in New York, are beginning to offer much larger salaries. Do you feel that's going to affect your recruiting?

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R: No, I think the reason the Cravath firm [Cravath, Swaine & Moore of New York City] for example, went up to \$15,000 is that they found that government was attracting bright young lawyers. Or at least they weren't going to Wall Street. Government has a magnetic pull and young lawyers recognize that sometime in their career, service within the government is almost imperative.

B: That is really the subject of my next question. The young men who come to work here and serve their mandatory four or perhaps more years, do they have any difficulty getting private jobs?

R: Not at all. We have a 20% turnover each year. The lawyers leaving find superb jobs.

B: In regard to this matter of your staff, the young men you get generally serve four or five years and move on then to private practice. Do you feel that this is the best way for your Division to function, as opposed to trying to keep career men?

R: To begin with, you can't keep career men doing the type of work that we're primarily engaged in. A man who tries 15 or 20 cases a year in different parts of the country has

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great demands made upon him. He has got to be mobile; he has got to get out and dig; he has really got to roll up his shirtsleeves and fight like hell for three-four-five years. But a career of that would drive the most tenacious person into an early grave. So that the work itself doesn't lend itself to career employees. We would lose some of the zest, some of the salt and pepper, if we sought a man who was going to be here for all seasons.

B: Then there's a positive advantage to what is a large and continual turnover?

R: That's right. And what we have -- the career people that we have are superb. Our section chiefs, for example -- there probably is no finer collection of lawyers you can find in the country in litigation and appellate work.

B: And they are career men?

R: These are career employees of the Department. It's their job to take this raw material we bring in each year and mold it into an operative division. I tell them that we'll keep the standard high, and it's up to them to learn their names. The quality will be constant. And I don't think we'd get that quality if we had to seek out those who were

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looking for a safe haven for 20 years or 30 years. My first assistant -- this is another interesting facet of government. I've been very anxious to bring law professors into government. When I was Chief Counsel, we had professors in residence. I've done this again in the Tax Division -- to bring from the academic world people who can spend a year or two and work along with us in a staff position. They bring many of the insights that the academic profession can bring to the practice of law. And they also learn to recognize problems of an ongoing government law office.

B: They take back insights, too?

R: Oh, they do. I've been very reluctant to bring anyone who isn't going back to teaching, because it's just too good an experience to waste on someone who wants to go into private practice.

B: About how many professors in residence do you have in the Tax Division at any given time?

R: Right now we have two. One of them, however, serves as my Deputy. He's from Columbia Law School and is going back after two and a half years to the faculty of the Law School. The other is from the University of Connecticut, and he's

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just having a ball, doing a superb job for us, but assisting in another area. When we bring 20 or 30 young lawyers right out of law school into an ongoing government law office, the transition for the recent graduate can be troublesome. The law professor in residence is a valuable aid in assisting them in making the transition.

B: How long does it take you to take a brand new law student and make him into an effective tax attorney?

R: I figure about two years. That's why we have a four-year commitment. Two for them and two for us. It works out well.

B: Have you ever thought, or do you conduct an exchange similar to your professor-government exchange with established lawyers in private tax firms?

R: No, it doesn't work out. The conflict of interest provisions would prevent this fellow from practicing when he got out of government, and he would certainly not be able to handle anything that his firm handled.

B: Your career men in the Department, your section chiefs, how many people is that?

R: We have 7 section chiefs and 8 staff assistants. We have perhaps another 40 or 50 in the Division who clearly are

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career attorneys. We then have another slice of maybe as many as 40, 50, who have been here more than four or five years, and the rest are in their 4-year incubation period.

B: Can your permanent men be paid adequately in comparison with private and academic work?

R: We've had quite a number of the permanent cadre who have gone out into private practice, some earning perhaps twice their government salaries, and return because there's something different about practice in the Tax Division than outside. They don't have client problems. You don't have to take positions that are borderline, or shadowy, or inappropriate.

B: In selecting your new men, do you run into political preference problems there? Congressman X calls up and says, "My nephew is graduating next month?"

R: We do from time to time, and certainly if his nephew is a top-flight man, we're not going to hold his uncle's phone call against him. But it's strictly a merit operation. We couldn't afford to lower the standards on any occasion. We certainly treat the Congressional inquiry gingerly and we write them nice letters, but if the man doesn't have it, he's just not going to be with us.

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B: If you have so many applicants, you must be relieved then of recruiting, or do you go out to recruit to make sure you get the best applicants?

R: No, we still recruit. We find dealing with the law schools, the law professors, quite important. All of us on the staff will take the occasion to speak at a law school, to teach one of the classes, to -- in effect -- ingratiate ourselves, let the students know what we're doing. We've devised a pretty slick pamphlet describing the activities of the Division, and we've got a tremendous alumni association of former attorneys in the Division who have a warm spot for the Division. Recruiting is the most important thing that we do here.

B: Do you find any regional importance in the people you hire? That is, are most of your people from certain law schools in certain areas?

R: We try not to. We discovered quickly that it doesn't make much sense to send a lawyer with the highest academic qualities and a Brooklyn accent down to Mississippi to represent us. We recognize that we're a national office of the federal government, and we try to recruit from all over the country.

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B: Is tax law so specialized that there are only a few good schools in that particular field, or do you find them generally teaching it well?

R: Well, it's taught in most all law schools. We're not so much interested in whether the man has had a very deep background in taxation when he comes to us; we're just looking for a highly motivated, and certainly an intellectually stimulated young lawyer who wants to try cases. He'll be able to handle our work.

B: Do you think that your position, the Assistant Attorney General in charge of the Division, should be a career position? Perhaps I ought to ask, is it a career position?

R: No, it's not. No, I don't. Coming to the Division for 3 or 4 years gives you the opportunity to operate at full throttle. The main thing a good man can bring is a sense of leadership. A new man every 3 or 4 years may be temporarily hard on the career people, but in the long run, they don't mind. Indeed, after 3 or 4 years, you find instead of being innovating, you are merely defending your previous decisions. That's the time to leave. The capacity to bring 200 lawyers to bear on the problems of tax litigation is something that -- just like the four-year



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man -- you can do it for just so long, and you just can't keep the pressure up. After a while you find yourself justifying the positions you've taken in the past, and you become a little more conservative and you don't add the difference.

B: Can a new man in your position do much to change tax policy or philosophy? That is, there are in the past the decisions of the courts and the statutes and so on.

R: Oh, I think so. I think that we talk about tax reform as if it were some bluebird of happiness. I think in reality there is a greater chance of getting reform bit by bit through effective advocacy in the courts rather than to expect the Congress to give it to us on a silver platter.

B: To return to Mr. Johnson, whom we've almost forgotten, do you notice any difference in being able to get men into your office now, in the tail-end of Mr. Johnson's Administration, I suppose, to the honeymoon period of the early part?

R: Right now, we're getting as good an applicant as we've gotten in the past. I tend to think that this is because the young lawyer is satisfied that (a) the work in the Tax Division is worthwhile, exciting, and (b) that it's apolitical; that he

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doesn't have to worry about an appointment to the Department of Justice today which could be rescinded January 21st.

B: Is there anything else that you would like to put on the record?

R: In retrospect, it has been a remarkable experience to have been in the Administration; both as Chief Counsel for the Internal Revenue Service and as Assistant Attorney General. I've really never in all that time dampened my admiration for Lyndon Johnson. I have recognized many of his faults; it doesn't take much of an observer to see those. There still is a major thrust to the man that is comforting and satisfying. So, serving him in these years has been still a pleasure.

B: Anything else, sir?

R: That's the size of it.

B: We thank you very much.

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