INTERVIEWEE: EDWIN L. WEISL JR. (Tape #1)

INTERVIEWER: JOE B. FRANTZ

October 30, 1968

F: This is an interview with Mr. Edwin L. Weisl Jr. who is an Assistant Attorney General; it's in his office in Washington, D.C. on October 30, 1968; the interviewer, Joe B. Frantz.

Mr. Weisl, tell us very briefly about who you are and how you came to be here.

W: I'm presently Assistant Attorney General of the United States in charge of the Civil Division of the Department of Justice. My relationship with this government, I suppose, starts with our family relationship with President Johnson that arose over thirty years ago through my father's friendship with Harry Hopkins who was then, of course, President Roosevelt's personal adviser and assistant. Roosevelt, it is well known, took a liking to Johnson as a young Congressman and wanted to make sure that he got broader acquaintanceship with people throughout the country, and he asked Hopkins to put him in touch with someone in New York who could introduce him around, and Hopkins picked my father. Johnson got to know him--used to come up frequently and stay at our house or our apartment in New York, and we involved ourselves in many ways throughout his career with helping him in his campaigns; helping him get newspaper support in Texas, and became very friendly with Johnson. Although I've always been active in Democratic politics, when Johnson became a Senator we helped him as much as we could. We worked on his Preparedness Committee at one point, and in his campaign for the Presidency in

'60; and then in '64, we, or course, were very active.

F: I will interview your father shortly, but before I do, do you have any boyhood memories of Mr. Johnson's visits there that particularly stand out?

W: I always remember what a good father he was. I remember one incident very vividly because it's so belied by what has happened, even in recent days of the birth of Lynda Bird's daughter. It amuses me that--the girls are big and I remember the time he told us, when Lynda was about five, how he took her to Neiman-Marcus to buy her her first pair of cowboy boots, which I gather is an essential for any Texas child. And he said that he took her to the little girls' department, and they didn't have a pair of boots that fit her. Her feet were so big he took her to the little boys' department, and they didn't have any boots to fit her. And finally he said, and he literally cried with a sob in his voice, he had to buy her men's boots. And he said, "that poor little girl is going to be so big and so ugly she'll never get a husband." And she has done very well, it seems to me. That's a very touching memory I have of him. He was quite a different man in those days. His voice used to die to a whisper; he was very modest in some ways--very retiring, at least in New York outside his own environment. I didn't know him in Texas. In fact, I never was in Texas until after Johnson was President.

F: Did he pay any attention to you as a child? You must have been barely ten years old when you first met him.

W: Well, we did become friendly, and he tried to teach me about politics. As I grew older, we had many disagreements on various issues. I

remember in 1948 when Johnson was one of these people filibustering against the Truman version of the Civil Rights Bill--I don't remember whether it was FEPC, or what were its provisions. He joined the southerners, and I wrote him a very fighting letter and I remember he replied in a reply that I never thought quite--impressed me as a document; I've been searching for that letter ever since. I know I've still got it somewhere. I think one of his virtues is that he demonstrated a capacity to grow and change with the times, and he shed these earlier opinions that I think were probably taken for political reasons rather than out of conviction. I never heard him have any feeling against any race at any time. I think he felt he had to do what a southern Congressman had to do to get reelected.

F: Well, now, along that line you were critical of him in 1948, and there is the widespread belief that Johnson never forgives or forgets. Would you say that your experience has belied that criticism?

W: I don't know that he ever remembered that I had criticized him in '48. I was hardly one of the leading citizens of the country then--not that I am now. Whether he forgives or not, I know he has changed his views on a lot of things.

F: How did you happen to wind up with the Senate Preparedness Subcommittee?

W: One of the virtual--the use of our firm--used my father; used Cyrus Vance, who became the Deputy Secretary of Defense and is now in Paris, as one of our negotiators; and he used me. He asked, as a team, to come down and help with these hearings after the Soviet Sputnik was launched and everyone in the country felt that something had gone drastically wrong with the country's defense and space program. One of these sudden revelations unlike the gradual dawning on one of

a new realization that suddenly just burst on everyone that we were in trouble.

F: Did Sputnik catch them totally by surprise, or were there intimations that such a thing was in the offing?

W: I never knew because I wasn't in the government then whether the intelligence agencies were surprised, although I gather that they were not; and that the defense agencies were not. But I think the public was shocked.

F: The public including the Senators?

W: I think many of the Senators. I think that as the hearings progressed, we found that people within the defense establishment had strongly warned the President--President Eisenhower--and the Secretary of Defense then--I think it was Mac McElroy and Wilson--that this would happen. And they were shrugged off and ignored, and no one realized what a traumatic event the launching of that Sputnik was. Of course, it turned out that most of these decisions were made by the then-Administration for budgetary reasons. George Humphrey was, as far as I could tell, the President of the United States then; and I might say one reason I'm so passionately worried about this election of 1968 is that I think that George Humphrey mentality will end up dominating Nixon, and the country will be in economic difficulties all over again.

F: How did you learn you were coming to Washington?

W: In preparedness?

F: Yes.

W: I forget that exact medium. It was just discussed--

F: What I'm trying to establish is the general climate when you arrived here.

W: Well, the general climate in Washington was one of real shock and dismay over this Sputnik launching. I can't think of any single event other than Pearl Harbor that was as traumatic for the country. And as the dimension of the gap between what the Russians were accomplishing in a broad technological sense--the magnitude of that gap became apparent, the sense of dismay. But when we came down here, we found a very confused city and a bunch of Senators who were very, very disturbed by what evidently had happened, but no real knowledge. It was essential to develop the facts on a day-to-day basis--statistics; hard information; to show where we did stand.

F: What was your particular job?

W: I generally interviewed witnesses; prepared questions for these witnesses; and analyzed existing documents, both classified and unclassified, that could be used as a basis for obtaining further information.

F: Sort of an investigative and research job?

W: Yes.

F: Whom did you interview? What kinds of witnesses?

W: They ranged from General Spaatz--retired generals to lower echelon assistants of Admiral Rickover. We found that a commander in the Navy's testimony in some areas was just as valuable as a four-star general's, and professors from the Harvard School of Business--management techniques were just as important. And we found that mismanagement in the Defense Department was just as important a contributor to our technological gap as money or anything else. This is one thing that shocked. And I'm not sure this has been corrected, although I'm not in the defense establishment. But to

make a decision in this country on a major weapon system took something on the order of three or four years longer than it took the Russians to make a decision to go ahead with something.

F: How do you account for this? Just a slowness in paper-shuffling, or what?

W: Well, it's a real bureaucratic organization that has developed in the Defense Department; you've pyramided the services, and then the Defense Department on top of the services; it has grown to be larger in bureaucrats probably than any of the individual services are now, although it was never intended to develop that way. And you've got the tremendous Congressional pressures; the pressures within the Bureau of the Budget; so that there's a layering of committees and decision-makers that you have to go through, and they all have different motives. One committee's motive will strictly be the enhancement of a particular service's prestige; another committee's general motivation will be the public good and the defense of the United States; a third will be worrying about the economy often from highly patriotic motives because the economy can't stand a new weapons system. Let's say it's better to have a sound dollar than an extra missile. These conflicting interests result in tremendous bureaucratic infighting.

F: When you came here, the Department of Defense was about a decade old; was it still suffering the pains of birth?

W: No, I don't think it was that so much. I think it was really suffering largely from the mentality of Humphrey--George Humphrey--which meant that they had to bear the brunt of the economy moves of the Eisenhower Administration. And also they had a rather unsympathetic and, to be quite candid, unintelligent Secretary. I think Wilson might have been

a great motor executive; obviously, he did not have the energy or the ability to really think about defense matters. And McElroy cared only for the ceremonial aspects of his job, and seemed to know nothing. Fortunately, they had a very able Deputy Secretary then named Quarles, since died; but Quarles, of course, had to take all the unpleasant jobs as well, so that many people blamed Quarles for our defense problems when actually he was merely defending decisions taken by others. He was an extremely able man.

F: Had you overcome that division between the Secretaries of Army, Navy, and Air Force, plus the Secretary of Defense at that time?

W: Not entirely at all. I think since that time the Secretaries of the services, in all candor, have been reduced to the status of glorified clerks. They have very little responsibility for new weapons and for actual military operations, so they're really procurement officers in training poeple. In the Eisenhower days I still think they had some power and they were trying to use it in opposition to the department itself. Also, inter-service rivalries were much more acute then than they seem to me to be now, but I don't know why that is no longer true.

F: In taking your testimony, was it fairly consistent on what the problem was, or did you have a wide variance of opinion?

W: We had a tremendously wide variance of opinion. The real broadening of the investigation came about because we realized that you couldn't confine any inquiry of this sort to the space program, which is what originally it was intended to do. Suddenly it was learned that not only did we lag in space, but because of our lag in space we lagged in ballistic missiles; because we lagged in ballistic missiles, it

was more imperative that our bomber forces be kept up; and they were not on adequate air alert, for example, at the time to cope with any pretential Russian threats. And that, of course, led into an inquiry about conventional forces, and it turned out that our conventional forces were then, seemingly at least, inadequate to handle the kind of brushfire wars that were then anticipated to occur. Viet Nam indicates that they may not be adequate to this day--I don't know.

F: Was there any real sincere feeling that Mr. Johnson was using this Preparedness Subcommittee as a political weapon against the Republicans or his personal enhancement within the party?

W: No, I don't think he was. I think he geniunely was not, and I think there was very little feeling that he was at the time. I think it was a time of shock to the American people, and he seemed just as genuinely disturbed as everyone else. He was reluctant, I think, to make categorical statements of conclusions, which surprised me very much. I think he should have been more categorical. He never would issue a report of that committee, although we had one prepared in draft. It was a damning indictment, I thought, of the Administration which would have been useful politically, true, but it also pointed the way I think to many useful changes in policy which fortunately I think have generally come about anyway. I do think this committee contributed materially also to the acceleration of our ballistic missile program, and a second look at our conventional forces. I think that it created enough political pressure on the Eisenhower Administration so that they had to respond, and they responded, I think, in the best way which was to recognize the public demand for

increased defense activity and give in to it.

F: Why do you think Senator Johnson withheld the report?

W: I have never been able to see. I think that he had an instinct perhaps that the report might contain some overstatements that would grow to haunt him, and it did, and I'll explain it if I may.

F: Yes, please.

W: The missile gap controversy became a very interesting one during the '60 campaign, and since then. In point of fact, it turned out that the Americans were able to keep pace with the Russians. But because of this, the Republicans said that there never was a missile gap, and it was a great lie on the part of the Democrats. As one of those partly responsible for the claim of a missile gap, I say this: that the way we assumed the state of affairs to be in the future in terms of ballistic missiles was to look not at what the Russian factories were turning out on a daily basis at the time that we were having the investigation, but to take the best intelligence estimate of what the Russians were fully capable of doing if they wanted to, at the same time comparing those with our plans which, of course, we knew. And under Russian capability analysis, it seemed that they could really outbuild us based on our present plans that existed in '58 or whenever this investigation started. And it seemed to us reckless and insane even not to assume that the Russians would go all out; because if they did and we were unable to react quickly enough, they could have built up an overwhelming superiority. In fact, the Russians did not go as all out as they could have, I gather, although I'm no longer privy to the intelligence that the people have, but I gather this is public knowledge. At the same time, we did

accelerate our missile program considerably under prodding from the Johnson committee, then under the Kennedy Administration. So that the missile gap fortunately never occurred; we tried to make it clear it was only potential even at the time.

F: This is an unprovable question and your answer will be equally unprovable for the time being, but from your past experience with this claim of the missile gap, do you think this is a legitimate issue in 1968? It has been raised.

W: It certainly is a legitimate issue in any presidential campaign. The main thing is to be factually accurate when you make assertions. From all I can tell, the current assertion by Nixon is not factually accurate; I think it's partly out of pique--the fact that this issue was raised against him in '60 that he's raising it now. I think it's a difference in kind--I don't want to sound partisan on this; I happen to be very partisan on it, but just objectively, it seems to me that he raised it out of pique and out of desperation for issues.

F: Did Mr. Johnson ever explain why he didn't issue the report?

W: No.

F: What did he do with it?

W: He just said that as far as he knew one did not exist, and he refused to acknowledge its existence.

F: What was in the report?

W: Well, I can't tell you basically. It would have been largely classified, and I think it would be a violation of my trust. It was first an analysis of the Eisenhower Administration's defense policy, showing that the fiscal policies that governed the defense ones and would place the country in jeopardy. Similarly with space, it showed a lack

of comprehension of the importance of the space program, and what it meant in terms of America's prestige and how, as a result, we lagged very seriously behind the Russians. The fact that we have caught up is a miracle as far as I'm concerned. Then we went into specific questions of conventional warfare; what was needed in terms of missiles; what was needed in terms of the space effort; what was needed--In fact, let me add that I think the Saturn rocket is a product of the Johnson committee hearings--at least, that we got it as quickly as we did, because of testimony by men such as Von Braun that said we weren't giving any attention to having a rocket large enough in size and thrust to be useful in space. The Administration thought it wasn't worthwhile because we had small hydrogen bombs; we didn't need a great big Saturn rocket to deliver them, so why waste money on something silly like space?

F: You think, if nothing else, that the psychological effect that you were turning up testimony accelerated the--

W: I don't think there's any question about it. You could virtually see it happen. I suppose another reason not to have a report was that we made as much of the testimony as possible public and tried to keep as little behind closed doors as we could. And I think the broad outlines of the defense problem then were properly brought into the open. Sure, you don't want to talk about your missiles work, and what the secret guidance device is. The fact that you don't have enough, which the Russians know as well as we do--probably better, is not--As a matter of fact, we found everything that we knew behind closed doors are not in Aviation Week.

F: Did Mr. Johnson meet with his council with regularity? What was your

modus operandi?

W: Well, he gave us a very broad scope to prepare witnesses and testimony, so that it wasn't necessary to go back and consult with him all the time. We'd see him--

F: You had latitude in whom you interviewed?

W: Utter latitude from him. He just turned the investigation over. He said, "You've got to find out who it is we should be examining, and who we should look to. I can't do that. That's why you have a lawyer."

F: Did he suggest names?

W: Well, he suggested names, of course, but they were the obvious ones. I think he left it to us to develop the ones that weren't so obvious from these names. Obviously, we went to the Joint Chiefs of Staff, and one went to retired military men who would be able to speak with more candor. But thereafter it was a question of digging; we had to dig to find men like Professor Livingston at Harvard, or assistants to--

F: Who is Professor Livingston?

W: He's apparently a great expert in military management problems at Harvard; he's not the sort of man that a Senator would know, but he gave extremely valuable testimony.

F: Were you free to go back into the Democratic Administration of these programs?

W: Absolutely.

F: It was whatever you could find?

W: Oh, sure. We found much there that was of interest. Again, one thing we did not find, though, in looking into the Truman Administration--

we did not find the desire to suppress new weapons systems for fiscal reasons or because of a lack of scientific curiosity about space and what have you. There were mistakes made, largely by the scientific advisers of the President, that were serious. Dr. Bush, for example, as you know never believed in the capability of missiles and what have you. He thought missiles were silly; you could never develop a bomb small enough to be carried on a missile, so why bother? That was his theory. Of course, we developed a hydrogen bomb that is amazingly small. Similarly, he didn't think the Russians would ever have the atomic bomb, which led us to lose our sense of urgency in weapons development in the mid-'40's. He had a book come out the day before the first Soviet atomic bomb was detonated, I think--the day before or the week before--

F: That was good timing.

W: Said they couldn't have one.

F: That's sort of like bringing out an anti-Johnson campaign book on March 30. Did your testimony develop a feeling that the Secretary of Defense should be strengthened at the expense of the Secretaries of the individual services?

W: Yes. I think we did get that indication very strongly. People felt that at the time inter-service rivalries particularly were a real problem and a real hindrance to defense progress; and unless those could be eliminated, there was little possibility of going all-out in what we really had to do, so that a further strengthening seemed indicated.

F: Did Mr. Eisenhower show an active interest in your investigation?

W: I gather he did, although we never saw him directly on the question.

I gather he didn't like it at all.

F: Do you think that he encouraged the inter-service rivalry?

W: No, I don't think so. I think he was very anxious to eliminate that. In fact, I always felt that Eisenhower was perhaps the most civilian President the country has ever had, which is one of the disturbing things about his Administration. I think he completely pretended as though he had never been a general and ignored these military matters, and deferred entirely to his fiscal advisers. George Humphrey, I think, did untold harm to the economy of the country and nearly fatally damaged our defense establishment, but the American genius enabled us to catch up. But had the economy remained strong throughout the Eisenhower Administration, I think we would have laid a better groundwork to solve our race problems today, because three recessions were setbacks that really, I think, damaged the Negro community. They're always the first, of course, to be laid off and unemployed. If they'd built up a little better economic base among the Negroes in the Eisenhower Administration, the Kennedy Administration would have had an easier time in trying to bring about civil rights.

F: Did the investigators move along a line at which they were trying to develop possible legislation?

W: Well, it was largely a budget question with the military and a willingness to allow broader scope to scientists and to new things. So it wasn't legislative--I think it did lead to the National Aeronautic and Space Act--a phase of the matter in which I did not participate.

F: Were you involved at all in the passage of the National Defense Education Act?

W: No, I was not.

F: This was an outgrowth though to a certain extent.

W: Yes. Let me add that--I'm so glad you pointed it out--that not only did we not confine ourselves to the space program, but went into all aspects of the military program, and we did look at American education as well, particularly on the technological side, and found disturbing things there, that we were not turning out as many engineers, as many technologists, as the Russians were. At least, it didn't seem so at the time.

F: So you added some fuel here to the educational necessities?

W: Yes. It wasn't just a space and missile gap; there was a tendency for our country to slow down and the Russians to accelerate in terms of all these scientific technological areas, including the most important one--education for the future.

F: Did Mr. Johnson show any particular interest in this? Education has been one of his cornerstones as President.

W: Of course he did. He has always--to his great credit--been most interested in education. I think this was a helpful thing to him to realize the problem that our country, which we always smugly assumed led the world in everything, didn't really at all. This was a good lesson for all of us.

F: Was military pay a consideration?

W: Yes. Yes, it was, and of course--

F: In what way?

W: Well, again, it was felt a discouragement to particularly officers of outstanding skills that we needed to retain in the service; we saw them going out--the men who really had the vision to do new things and to run a military establishment in a manner appropriate

to the second half of the twentieth century.

F: Did the leaders of the several services agree that they were losing perhaps their better minds?

W: I think they did, yes. We had a lot of trouble in those days getting testimony from actual high-ranking officers. There was a tremendous amount of pressure on them. That's not to say it no longer exists, but there was then pressure on them not to testify with total candor; that technique which I deplored and still do, although it has not been unknown to have the Joint Chiefs of Staff sign papers agreeing with important decisions so that they are unable to retract later on what was going on. And I think not without a certain amount of coercion.

F: Where do you think the coercion came from?

W: I think it came from the Secretary of Defense and the White House.

F: Were you involved at all in the effort to set up a joint space committee of the House and Senate?

W: No, I was not personally, but that was part of this whole investigation.

F: You developed information along this line?

W: Yes.

F: Were your investigations involved in bringing about this agreement between the U.S., England, and Russia for a cessation of nuclear testing?

W: I don't believe we were. I've no recollection--

F: This is independent of this.

W: Yes. Well, I don't say that it was. I just have no recollection of that coming up in my small aspect of this.

F: How were you dismissed? I mean, why, when, and so forth--did you just run out of anything to investigate or did you come to a budget

end?

W: No. There was no budget problem for this investigation, because it didn't really cost anything other than printing. Existing staffs were used; I think we got for our six or eight months in Washington full-time and many months thereafter part-time, traveling back and forth--I think we got the grand total of $3,000 in expenses for the three of us.

F: When the government calls in someone like that in the 1950's and 1960's, they do not try to match the market rate for such advice, do they?

W: They paid us nothing for this at all. We got a little expense money. I think that they try--Many lawyers are very willing to do these ad hoc things for nothing. I know Fowler Hamilton of the Cleery, Godley, Friendly, and Hamilton firm, George Ball's old firm, was counsel to a similar committee chaired by Symington some years before the Johnson committee sat; and Fowler, I think, got nothing either. It's a tradition among lawyers to do this, even though it's sometimes expensive. We certainly found it a very expensive luxury.

F: Was this committee recreated by Mr. Johnson as Majority Leader, or was it already underway when Sputnik broke out?

W: This was the old Truman committee. I forget if it had the same name when Truman was chairman, but I think it was called the Preparedness Investigating Subcommittee of the Senate Armed Services Committee, and it continues to this day with Senator [John] Stennis as chairman.

F: Did Johnson name himself to the chairmanship?

W: I think that it was one that he had before he was Majority Leader--my impression and memory, so that he just continued in that position.

It's amazing, by the way, how much time he did devote to it. He attended a great majority of the hearings--considering he was then Majority Leader. It was obviously one of his paramount interests at the time.

F: You don't know how much is luck and how much is insight, but Mr. Johnson was hooted at in those middle '50's for setting up a space committee as just being something visionary and a bit of title-gathering really. Did he feel a justification out of what had come from Sputnik and our concern with space, or were you in any position to judge?

W: I really wasn't in a position to judge. I always thought Johnson was a man of considerable vision though. I mean, after all, he had served on the armed services committees since he was first in the House and then later in the Senate, so that he did have access to the best information. And particularly in the '50's, he was the logical recipient for all information that was anti-Administration, being the leading Democrat in the country. And I think he used this wisely and responsibly. But he was pretty upset about what had happened to the country.

F: But you weren't given any directive the way you would give an attorney a charge to prepare a brief that would assemble a certain amount of facts to prove a case? You were just--

W: Yes, in fact he was very specific. I remember this, and I'm glad as we go along--I hadn't thought about this in some time and I haven't really prepared for our interview. But he had been insistent that we avoid using it as a political instrument. He said that may happen as a result of what has developed there, but he doesn't want any use of the committee for political purposes as such. He said, "This

is too important for politics." I really feel he has been criticized by many liberal, and God knows I feel I'm to the left of President Johnson in many ways for not attacking the Eisenhower Administration enough. But I think that the way he acted as Majority Leader, one, enabled the country's business to go on for those eight years, and was a very constructive influence. I think the Eisenhower years would have been far more dismal without Johnson, and if he had simply attacked and proposed extremely liberal programs in those days it would have failed, of course, or been vetoed; or probably no doubt have been beaten because the Democratic majority wasn't that big. We would have been in a lot of trouble; it would have made wonderful liberal rhetoric, but not only would it not have accomplished anything affirmative, it would have had a real negative effect and we wouldn't have gotten that which we did get. And there were some housing programs in those days--

F: They would have been more crucial than they are.

W: That's right.

F: Then you went back to private practice after this?

W: Yes.

F: And you re-entered politics in 1964 as the State Director of the Democratic campaign?

W: Well, we worked for Johnson in '60, but I think--

F: I was going to ask you about that. Did you have any role at all in that preconvention boom for Johnson in 1960?

W: Yes, I did. I worked with it as much as I--I was a delegate to that convention from New York; I worked within our delegation as much as I could; I tried to raise money for President Johnson and did all

these nebulous hundreds of things that you do to try to get a man nominated for president. The meetings; the behind-the-scenes maneuvering; the fund-raising; the talking, probably most of it futile--at least in this case it was. I must say we came a lot closer with Johnson than I thought we would in '60. I felt that he had never gone all out in his campaign as I would have wanted him to; I think it was much a last minute effort.

F: Was Johnson slow in giving you an affirmative decision to go to work for him?

W: Absolutely.

F: What do you think held him up?

W: Oh, I think three things, really. One, Johnson is a man who doesn't like to lose, so he didn't like to go into something unless he was fairly certain of victory, and that never appeared. Two, we underrated, as I think did everyone, John Kennedy's organization and his abilities. And all Senators, I think, had this feeling about Kennedy simply because he wasn't willing to devote all his time to the Senate; that he had greater ambitions, and this other Senators didn't see so they underrated him. And third, Johnson was very busy as Majority Leader and it was very difficult to abandon that role and go out and campaign. I was amazed--I tell you now that we came very close to having a revolt in the New York delegation in favor of Johnson. They felt not so much against Kennedy as they were that they were being steam-rollered by the leaders of the state delegation, and they resented it very much. But in those days there still was an organization in the New York Democratic Party, and it was able to assert control over the delegates.

F: So being a Johnson man then in the 1960 delegation was not exactly a lonely job?

W: No, it wasn't at all. We only got a handful of votes--two or three and a half, something like that, but there was real sympathy. As there was for Governor Stevenson. I think the majority of the New York delegation would have voted for Stevenson and Johnson combined, and that Kennedy would have gotten a minority in an actual free ballot. But the pressures that were put on some of those delegates would be irresistible to me and it certainly was to them. I remember one fellow telling me that he had only fifty patronage positions. He was in a little county up-state New York, and the only patronage he got for his workers was the New York City watershed--it goes way up-state, and he had some reservoir jobs. And he said he was going to vote for Johnson, but they said, "go right ahead; you can vote for anybody you like, but you won't have a single job in the morning." So he voted for Kennedy.

F: Were you surprised when Mr. Johnson was offered and accepted the vice presidential nomination?

W: Yes, I was. I was very surprised and very shocked, in fact.

F: What was the reaction of the New York delegation generally.?

W: Well, I don't know, because I was already on my way home; I thought it was all over, and I thought I'd rather see the acceptance speech on television, so I don't know what their reaction was.

F: Did you see Mr. Johnson at all during the campaign of '60?

W: Yes, I did, although I couldn't be active in '60 because I was in on a trial in a very major case all through the election campaign. But when he'd come to New York, I'd see him and we'd talk frequently.

F: Just mainly though in an advisory capacity?

W: Yes.

F: Did he seem fairly confident in '60 at the Democrats' chances of unseating the Republicans?

W: No, I think he was very worried about the '60 election. Personally, I was convinced that Kennedy would win. And I was amazed when it was as close as it was, but Johnson, I think, was very surprised about winning. He was worried about carrying Texas, he remembered Al Smith, as we all do.

F: Were you present at any of Mr. Johnson's campaigning in New York in 1960?

W: Yes.

F: For instance?

W: He didn't, as I recall--I remember being in court most of this time, so it's hard to remember--But I recall that he did not go to any of these large rallies, because after all he was a fairly alien figure in New York, and a southerner and what have you. He came to small gatherings for fund-raising purposes, and everyone who attended them came away with a quite different impression of Johnson than they had before they actually got to see him. New Yorkers, despite their vaunted liberalism, are a very insular people; and, my gosh, a southerner from Texas must be an arch conservative. But when they heard him in the flesh, they were very much impressed and surprised.

F: He came across, then, to--

W: He came across very well.

F: Were you active among New York businessmen? As you will recall, the business community, of course, has waivered in this--it was for Nixon

in '60, and then went for Johnson rather heavily in '64. In 1960 did you work with the business community at all?

W: No. Of course, I was--I didn't because, again, I was in on trial so much of the time that I was very hard pressed to do anything in that campaign.

F: Then you were though quite active in '64?

W: Yes.

F: Did Mr. Johnson make the appointment, or the national committee, or how did your--

W: No, I was appointed before my father even became national committeeman. The party leadership around then was, I think, generally the state chairman McKeon who was a Kennedy man and Jack English, who was the leader of Nassau County, is now the Democratic National Committeeman. And Jack En lish and McKeon seemed to have called me in. I knew English quite well. And English seemed to have most to do with it; I think he'd been Kennedy's closest leader in the state and then after the assassination, he was very cooperative with Johnson. And he asked me to be campaign director, which I did.

F: Was there any serious disenchantment in the New York Democratic hierarchy with Mr. Johnson in '64, or did they accept him as inevitable?

W: He was accepted as inevitable and quite desirable. Everyone was then impressed with the wonderful way he had behaved during the transition period after the assassination. I don't remember what his polls were; they were enormous in those days. And he'd gotten some very good and acceptable liberal legislation through Congress which New York very much approved of.

F: This was the year that Bobby Kennedy ran for the Senate?

W: Yes.

F: Was that any factor either pro or con in the presidential election?

W: I didn't think it was. It took some money away from the presidential election, but I never felt we needed a lot of money in New York for Johnson. Kennedy's mistake was--He made a mistake initially in New York, I thought, where he underrated the popularity of Johnson and tried to run a sort of independent campaign. But then he discovered that there was real resentment on the carpetbagger issue, and that Ken Keating had a sort of plaintive appeal to the people. And towards the end, he was really trying to ride the coattails. Fortunately for him, because Johnson won by well over two million votes and he only won by six hundred thousand, I think. And with that tremendous disparity, obviously it was the coattail effect.

F: Were the Kennedy senatorial campaigns and the presidential campaigns run somewhat independently of each other, or was there a tendency to promote the whole ticket?

W: Well, there was no tendency not to promote the whole ticket on either campaign, but they were in general run separately. I think Kennedy had his own people--his brother-in-law Smith and the old John Kennedy crew that were somewhat at sea because of the death of the President, and they helped Robert in the state. But Johnson had plenty of good Kennedy men working for him--O'Donnell and his brother Warren were both running the Johnson campaign and working in it very well.

F: Did you have any difficulty at all in selling Mr. Johnson to the groups that you--

W: None in '64. One wishes all one's campaigns ould be that easy. Johnson carried every county in New York--there are some fifty-seven

or fifty-eight counties.

F: All the up-state counties too?

W: Every single one. The nearest any democrat--anyone, had ever come was Roosevelt who carried only eight in 1936. There was just utter rejection of Goldwater in the state by the Republicans, as well as Johnson's then great high personal popularity.

F: You didn't have to counter the fact that William Miller came from New York?

W: No. Miller was a liability actually more than an asset. He had no standing in the state, was very unpopular in his own Congressional district at the time, and was unknown outside of it. I'm told he would have been defeated for Congress had he run that year, so he was lucky to get the vice presidential--

F: Might as well be defeated on a large scale.

W: Sure. That's right.

F: Then you came down to Washington again in '64?

W: Yes.

F: How did that come about?

W: Johnson had originally offered me a post on the Securities Exchange Commission in about '63 as his first appointment, but I just was not interested in that particular post. So I was asked--I think I saw Fortas and he said I should come here and run either the Civil or the Criminal Division. Well, neither of those opened up. Beside, Criminal had to go, and I think very properly, to a man who was not identified with Johnson because of the Baker case. They didn't want to have any impression of favoritism towards Baker. So the only thing that opened up was the Lands Division, and I was offered that

in '65. It sounded interesting because I'm a conservationist.

F: What were your duties in the Lands--Natural Resources Division?

W: Well, there were a number of things, most of which sound uninteresting and are, but some are very useful. We had to do all the land condemnation for the government which requires quite a large acreage every year for various projects; and handle cases involving claims by Indian tribes against the United States for land which was taken away from them in the early days of the country, which is not as interesting as it sounds because it's more cut and dried. But we do have a tremendous amount of litigation involving Indian civil rights, Indian property interests that are always being menaced by white people today almost as badly as it was in the nineteenth century; defending government property interests in oil and gas and minerals and oil shale.

F: Do you have a federal preemption problem here in this matter of handling Indian land rights?

W: Yes.

F: You get into this controversy between where State rights end and federal begins?

W: That's right. For example, a very current issue created a lot of publicity and a lot of ill feeling on the part of the Indians. You may have heard of it. Historians might have some fun with it later on. It's the question of their rights to fish in these rivers in the Northwest.

F: I remember Dick Gregory fishing--

W: That's right. Dick Gregory was out there; in fact, I think I helped get him out of jail not too long ago. He'll never know that, but-- These poor Indians had a treaty that, as far as I am concerned, on any fair reading was designed to give them rights to fish without

licenses and free of restrictions on tackle and on season--at least to the extent that it didn't absolutely destroy the fishing for other citizens. And yet the state was, I think largely for political reasons, impounding their tackle and throwing the Indians in jail and making a great crusade against the savages. No one had done anything about, and when I heard about it I insisted that we go out and defend them in court; that we defend every Indian whether it's in a Justice of the Peace Court or anywhere else and at the same time try to enjoin the state from interfering with their, what seemed to me to be, clear treaty rights.

Now, Justice Douglas didn't agree with this and he held that the treaty didn't give the Indians these rights, I think, for two reasons. One, and I say this with all candor, I think he prefers fish to people and he was falsely convinced that conservation depended on stopping the Indians; and, two, I think a very poor brief was submitted to the Supreme Court by our Solicitor General's office. Instead of using the draft written in the Lands Division, he used one written by a lawyer up there who frankly knows nothing about the subject and tried to make a civil rights case out of a treaty case--make it look like the Indians were being discriminated against, which they weren't at all. All we wanted was them to be treated in accordance with the treaty, but they didn't understand that, and it was badly briefed. We protested in vain to the Solicitor General, who is God here when it comes to the Supreme Court.

F: Are we faced with at least a generation of Indian land title claims? Is this an insoluble sort of thing; is the history too complex?

W: No, the Indian question has shifted, I think, from their title quest

claims now. The treaty case shows the way things are going to one of economic development. And there has got to be, in my mind, a program similar to that which you had in Puerto Rico to try to develop the Indian reservations.

F: This is really outside the purview of the Justice Department?

W: It really is, although I've involved myself just as a citizen in it and intend to stay involved. I've had pretty bitter battles with the Interior people over it. I remember some Indian legislation, I forget, that Udall proposed that was supposed to do a lot and really didn't--involving loan funds and things like that. And I wrote what I thought was a pretty good letter--I know it has been used since then--to say what I thought ought to be done for Indians. The Attorney General wouldn't sign it; he thought it was too controversial.

F: Was this Ramsey Clark?

W: Yes. I gather he's not too interested in Indian problems. So I had it circulated, let us say, privately. It has got to be a question of tax incentives, and it has got to be the government putting in the money. Because these reservations are badly located up in the Dakotas where no business wants to go, and you've got to give them real incentives to do it. But the Treasury Department is against all these kinds of economic incentives, and the Interior, the Bureau of Indian Affairs, is too unimaginative.

F: To your knowledge, has Mr. Johnson shown any active concern with the Indian problems?

W: Yes. He was very anxious to. He was the first President really to show any in a long time. He had Udall make a thorough study and set

up a commission on it, but I think his mistake was that he left it too much to the Interior Department. I think he should have brought in independent experts. But I didn't have that good an access to the President, so I don't blame him. I would think I would have acted the same way as he did under the information he had. He had to know the situation on how bad the administration of the Interior Department has been.

F: Is tidelands still a viable issue?

W: No, there are some certain loose ends to be established, some of them which are quite important, but the principle is all there. There has just been argued at the last really important case involving where the coastline of Louisiana begins--that obviously if you are measuring nine miles from the coastline which is all state land, that the coastline's location is pretty important. Louisiana has contended for a line that would put the coastline probably down in the middle of South America, and the government says it's the line between the mean high and mean low tide, or something roughly equivalent to that. We should win the--The state says it's where the coast guard applies the inland waterway rules, which is miles from what you and I or anybody with any sense would think of it as the coastline exists. This could give the state millions of acres of oil lands. I don't think the court will decide that way, but I don't know.

F: This is just a matter of working out legalities and not anything that properly concerns the President any more?

W: No, I think that there were some political decisions made in some of these cases with which I would have disagreed, not to press the

States too hard on areas that were in dispute--to give away, I think--to make an adjustment. None of this happened while I was here, fortunately.

F: You never heard Mr. Johnson express himself--

W: Johnson never did anything. It was before Johnson that the decision was made by Cox, the Solicitor General. I think Johnson would have opposed this because he was very sensitive at all times to his vulnerability to criticism as a Texas oil man. So he was absolutely above reproach in that. I think before that there was a feeling in the Kennedy Administration that some of these tideland states had been pretty shaky politically for the Democrats and that it wouldn't do to press them too much. And I think that some bays and what have you were conceded away that shouldn't have been.

F: The oil depletion allowance is none of your concern?

W: No.

F: Why did you shift over to the Civil Division?

W: I have no idea. It became vacant and I think the President felt that it was a more important job; that I would enjoy it; and that I would serve him well in it.

F: What's more important about it?

W: Well, I'm not sure that it is. I think it has got a broader scope of activities, really, as a real law office. There is very little question of policy that comes before it. It has all of the government's contract work here; that is, all the suits by contractors against the government on contracts, and suits by us when there were frauds committed. And we have all the government's tort claims work, all the government's

frauds, all the government's contract work, all the government's admiralty work, all the government's customs and patent cases, and practically all the suits against federal officials in their official duties. For example, we have all the Selective Service cases on the civil side here.

F: Do you initiate any investigations, or you take what's brought in? For instance, if there is suspicion of kiting prices or some kind of defrauding by a contractor?

W: Well, we'd probably never initiate it because we'd never have knowledge of it along that--Some other agency of the government would find out about it and either get the FBI in or have enough without that to give us a case. We certainly would initiate it if we were the first to gain knowledge of that.

F: But you more or less--I'm trying to establish where you come in on a case.

W: Well, we usually come in after the suspicion--in the fraud area at least, where there's suspicion that there has been double-dealing by a contractor or by someone who has had business relations with the government.

F: Does Mr. Johnson show an active concern with these several divisions in the Justice department?

W: I don't think he does, certainly not with our end. We are really a pure law office; we don't have the areas of great controversy that other divisions do. As far as I know, he has never interfered with the antitrust or criminal proceedings at all since he has been President. I don't think he has been too well served by a lot of his departments' activities in these fields, which indicates to me

that he definitely hasn't intervened. I think our total lack of any antitrust policy the last three years or four years has been to me strange and very much against his interests, and I think very much against his personal inclinations with his populist views.

F: I have wondered whether there has been a real change in legal feeling in the antitrust field particularly, or whether this is just a particular group that has come along at a particular time that is more permissive toward some practices.

W: I think it's even sillier really than that. I think in Turner you had a superb theoretician who was more interested in developing a case that would make a good footnote in his textbook and for its theoretical value than for economic considerations, so that he let some mergers go through that absolutely astounded me. One that I've always cited--the Pure and Union Oil merger.

I knew a little bit about that, having been a Pure Oil stockholder and part of a group that opposed the merger on economic grounds. But it was so clearly, it seemed to me, a creation of a monster oil empire that shouldn't have gone through, but there it walked right on through--as did other cases I know of. Yet, little minimal things--I don't like to talk--like the suit against the window cleaners in New York are brought, you know, that have no real important economic implication. The purpose of the antitrust law is not to be an intellectual exercise for lawyers; it's to protect the American economy from the effects of monopoly and foreclosure of competition, but that attitude has not prevailed in this department since I've been here to my amazement. Which leads me to a feeling that I've always had that the antitrust laws, one, are probable failures because we've had

them during the period when most of our great corporations have become great through merger or otherwise, and, two, that they're so important to the country and the question of competition is so important that it shouldn't be left to mere lawyers to administer.

F: Is there much overlap between the several divisions of the Justice department, or do you all pretty much run an independent--

W: Well, there used to be under Attorney General Katzenbach, who was a man, I think, genuinely interested in getting the best ideas possible from whatever source. So that I remember a number of major issues where all the assistants were called in, completely baptizing outside their own parishes, to get this cross-fertilization of ideas. I even remember prevailing against Cox, then Solicitor General, on a major civil rights question. It turned out, of course, that Katzenbach sided with me; I thought he was the greatest lawyer in history if he thought I was smarter than Cox. Of course, it got into the court and Cox turned out to be perfectly right, and Nick and I were wrong.

F: What was the case?

W: The question of bringing--the theoretical point of bringing voting rights questions as original acts into the Supreme Court as opposed to suing the district courts in the first instance. And actually I was on the side of the Supreme Court, Cox said they'd never take it. And while they didn't take it, they consolidated them all with a case that was already in--and it's a very complicated legal business.

But Nick ran it that way; he wanted ideas from everyone. But we now have returned to our own little bailiwicks, which has some advantages; no one interferes with what I do here.

F: Have you had much social contact with Mr. Johnson in recent times?

W: No, I have not.

F: Were you taken by surprise by the March 31 announcement?

W: I was.

F: Did it make any difference at all in the procedures around here?

W: Well, I think there was a great sense of shock and a sense of uncertainty about everyone's future that I think was reflected in it; and there hasn't been any activity in the department since that time of any significant nature, but I don't think there had been anyway for some months prior thereto. It has been, quite frankly, a quite dead department.

F: What do you think has caused it to be dead?

W: Well, I think largely a lack of leadership under a total--

F: Do you think this stems from the Secretary?

W: Yes, I do.

F: I mean, the Attorney General.

W: Modest intellectual powers and great suspicious nature, so he doesn't want other ideas; he's afraid of other ideas. And he doesn't have the intellectual resources to think of things to do himself which is about it.

F: He has become a great political liability, in a sense.

W: Well, people are always criticized for the wrong things, I think. And here's a man--at least, in its public utterances--on crime and on civil rights issues, he has been on the side of the angels. Frankly, I don't think he has done anything to establish any liberal credentials other than a few speeches. At the same time, I'm not sure that his true conduct has been that of a liberal. I just don't know. But

he shouldn't be criticized for being a liberal--it's his right. He's just simply saying people have to get their Constitutional rights, but he has been very ineffective.

F: But mainly the department has just been drifting?

[There is a break in the tape]

W: --didn't have any registration responsibility under the Gun Bill or not if the administration had been passed, but no, we don't have any.

F: You don't know whether you had problems in keeping up with the licensing of guns or not, do you?

W: No.

[There is a break in the tape]

F: Have you had any impressions on Mr. Johnson's relations with the establishment press? Is there an establishment press, or is this spurious?

W: There certainly is an establishment press; to the extent that it really is important outside New York and Washington, I don't know. I think there are certain in-reporters that set the tone for others. A digression--I remember that my father has always been on the board of Paramount Pictures, and they always found that the New York Times' review of a picture, especially when Crowther (sp) was there, was so important that all the other reviewers and the "Podunk Gazette" would just simply copy out what Crowther had written, so it--

F: If Crowther says it's good, then it's good in El Paso.

W: Yes. But unfortunately, Crowther usually said it was bad, so they quit opening pictures in New York. They started opening them on a nationwide basis. I think that same thing happens today. Evans

and Novak, Joe Kraft, certainly Reston are copied by other people. But I have a graphic illustration of what I think was Johnson's problem with the press. I think they didn't like him because he wasn't President Kennedy. He hadn't gone to Harvard; he didn't give the right kind of parties; he didn't wear the right kind of clothes. And I'll tell you why I believe this. It's as vivid a recollection as I have of the Johnson Administration. It was a party I gave election night to celebrate the victory--

F: This is in '64?

W: '64 in a suite in a hotel where we had our headquarters.

F: This is in New York?

W: Yes. And Art Buchwald walked in. He's a friend of mine; we've had a lot of mutual friends for years, even while he was in Europe. And Art said, "Boy, now we're going to get this son-of-a-b." I said, "What do you mean, Art?" And he said, "Well, we were nice to this fellow while he was running against Goldwater because we were scared of Goldwater, but now we're going to get him because he's just a Texas clown." And they got him! There was this determination that Johnson was not their kind of man; and I'm not sure that he didn't aggravate the problem with many of the things he did, but he didn't start it, is all I can say. There was this definite predisposition.

F: I have wondered, looking at the current candidates, if there won't be a crucifixion of the next President also?

W: Well, I think that's possible. Neither Nixon nor Humphrey are the Ivy League stereotype that I think this establishment press admires although most of them are not Ivy League people themselves. Humphrey

probably comes closer to a man they would accept than Nixon, who was lower middle-class, and a man they've got an unfavorable stereotype of. He'll bring in a lot of Ivy League types, and they'll see how stifling this type can be although the younger people around Nixon that I know are, I suppose you'd call them, the Bourbons of the century. They're stuffy, unimaginative, and boring, but they're Ivy League. Rowland Evans can have his fill of little bull dogs. It's funny that Charlie Bartlett, who's probably the most Yale man of all the correspondents down here--true, old blue in every sense and gives lots of money, has always been quite kindly disposed towards Johnson in spite of being a good friend of the Kennedy family. I think that's right. I think that any president other than Kennedy or McCarthy would have had the same problem. It's unfortunate that the cut of one's clothes is important to reporters, but it seems to be.

F: Is there anything that can be done without infringing on the rights of free access to information to avoid either television stereotyping of certain people or slanting?

W: Well, I think you've got to go over their heads is the only way by direct appeals and direct contacts with the people. It's the only way you can avoid it, to see that your stereotype isn't true. This has been very difficult particularly for Johnson. One, there's this tremendous proneness toward assassination and violence which makes the Secret Service reluctant to expose him at all; and then the tremendous anti-war feeling that makes it dangerous for any man to go out in the country. I remember "blowing one," as they say. I was an advance man for a trip that he made to New York a couple of

years ago. I thought I had it all arranged and pickets wouldn't be able to interfere. But of course not being able to get around, I then had a broken knee and was hobbling on a cane. I left a little chink in the armor, and the poor President was confronted with pickets as close to him as a regular part of his audience, and his message couldn't be heard, and it was most unpleasant. So that, I suppose, leaves you television as the principal means of going to the people. I think candidates are just going to have to adapt to that medium. The Texas courthouse style inherently won't go on television, but that doesn't mean you have to change your whole personality. You just have to change the way you speak in public. There is going to have to be an accommodation to television.

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By Edwin Weisl Jr.

to the

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