

INTERVIEWEE: EDWIN WEISL JR. (Tape #2)

INTERVIEWER: JOE B. FRANTZ

May 23, 1969

F: This is the second interview with Mr. Edwin Weisl Jr. in his office in Washington, D.C. on May 23, 1969; the interviewer is still Joe B. Frantz.

Mr. Weisl, let's go back to your days when you served with Mr. Johnson in the United States Senate and talk a little about the inception of the missile and satellite programs, how this got kicked off and how you became involved.

W: The missile and satellite program investigation by the Johnson committee--the Preparedness Investigating Subcommittee--started because of the very panicky reaction throughout the country to the firing of the first Soviet space satellite, Sputnik I. At that time our space program was in its incipency and it wasn't getting a great deal of publicity, and no one at least in the general public and in the elected levels of government had any idea that the Russians were this far ahead of us. This created a great deal of shock among official Washington and among the country as well, and Johnson, whose committee seemed to have jurisdiction over this, took it and initiated--

F: You really didn't have any precedent to know who did have jurisdiction, did you?

W: No, there was at this time no space committee, for example. The investigation originally planned to look into the space program alone, but as it developed there was a great deal of military involvement

too in the missile and rocket programs.

F: Well, now, when you investigated, how did you proceed? What did you investigate?

W: Well, we first decided to define what the problem was and what the areas in which there was a real gap between our country and Russia, and the areas that we had neglected; and we interviewed, I suppose, as many leading scientists as we could that were at least affected with these programs, or interested--Edward Teller, Dr. Bush, and hundreds of others, Jerry Wiesner (sp), who has now been so prominent in the ABM debate. We interviewed leading military men both in uniform and retired, and also people in the aerospace and defense industries.

F: Did you have a feeling that their intelligence on the Russian progress was fairly accurate, or were they just guessing?

W: We found to our amazement that our intelligence at least in terms of expecting the Russians to be considerably ahead of us in space was fairly accurate; that what had happened was, I think, largely budgetary considerations--the Eisenhower Administration had--well, not exactly suppressed--certainly had not given a great deal of emphasis--

F: Had preferred to disbelieve--

W: No, I don't think they preferred to disbelieve; I think they preferred to ignore it and hope that they could get by, but they couldn't.

F: Did you get the feeling in your meetings with Senator Johnson that this was a political hot potato, or was this handled strictly as a national concern?

W: Well, he at least told us that his interest was one of national concern, and he seemed to conduct himself that way at all times. However, the

last minute he refused to issue a report of this committee, summarizing the facts and summarizing our conclusions and recommendations. I cannot feel that this was other than politically motivated; I considered it a grave mistake at the time and still do.

F: What do you think became of the report?

W: The report was pigeonholed to the extent that there was a completed draft and there was a partial draft that probably has been destroyed, I never have had it.

F: Was there a minority report also?

W: There would have been, I think, had there been one issued, and Johnson said he wanted to avoid a minority report. I didn't think it mattered that there was a minority report; unity is fine when it serves some purpose, but just to have a facade of unity when in point of fact there isn't, is not useful.

F: Did you observe at this time the alleged tendency of Senator Johnson always to find a consensus or a near unanimity in reports he issued?

W: Yes, there was that strain in him--I don't think it had any point at all. I don't believe in unity for its own sake, unity only to serve a purpose. He seemed to think unity was more important than the purpose--I never understood that.

F: What was your estimate of this committee from your experience as an investigative committee? This role of the Senate investigating committees of various sorts comes under consideration all the time, and I'd be interested as an investigator in your opinion of it.

W: Here, I think, I'd find it impossible to fault Johnson; I think he went about it in the right way considering the cumbersome machinery of the Senate that you have to deal with. Most investigating committees,

I think, are most superficial; they give each Senator ten minutes to question a witness; the counsel only has ten minutes too. There's not enough time to prepare witnesses and do the pre-appearance studies that are necessary to know what questions to ask and how to elicit the information needed. Johnson gave us all the time we needed, he gave counsel--my father or Cyrus Vance, I didn't do any questioning at the time--all the time they needed to question witnesses, and there was plenty of time and there was a great effort made to interview all these witnesses long before their appearance so that we would be able to elicit all the information we felt the committee needed. At the same time we gave the witness every opportunity to supplement his testimony so that if we didn't cover areas which he thought were important, he would then be able to tell the committee because often the counsel asks questions he may subconsciously or consciously edit a witness's testimony and keep out of areas that the witness feels are important, so we gave them that opportunity.

F: On some of these Senate investigating committees, it seems almost as if the committee is a committee for the prosecution and the witness is on the defense, let's say he's badgered if you prefer. Did you observe that in this particular committee?

W: Well, there was some badgering, I think, of witnesses that were defending the Administration's position; I think the reason was that they were having to take a defensive view and were not allowed to fully express their views, and therefore the committee worked them over. It was partly partisan politics, but partly the result of dissatisfaction with what they were permitted to say.

F: Trying to probe beneath the crust, sort of.

W: Yes. I think that some of the witnesses were forced to espouse the Administration's position when they really didn't want to.

F: To move ahead, you were quite active in New York politics, most particularly in city politics in New York, in the early 1960's. Did Mr. Johnson as either Senator or Vice President show any great concern with the New York political situation?

W: He didn't show enough in my view. He completely neglected the needs of that organization, and eventually he ended up with a great deal of resentment there which in part led to his downfall; it was no different than his conduct with the party throughout the country.

F: Was this partially just a case of they didn't see enough of him, or he didn't take a heavy enough hand, or a hell of enough hand if you prefer another adjective?

W: Well, I think he was partly guided by Roosevelt's experience, but he didn't draw the right conclusions from Roosevelt's experience in directly interfering in primary elections; that isn't what anybody wanted of President Johnson and it just wasn't his role. But his role is to make sure that those people in the party that worked for him in order to see that he is reelected are consulted, at least have their candidates for appointment to office considered and screened. There's no need to appoint bad people, but their wants and needs ought to be considered, and also help in their political campaigns. Now Johnson, in my view, neglected his functions as leader of the Democratic Party which substantially contributed to his downfall. That is to say, when things got rough in the country over the Viet Nam war there were no friends to stand by him in his hour of need. If there had been a strong and united party, which he could have built,

he'd have been better off.

F: Do you think this is a lack of understanding of the role of party machinery?

W: I think that's largely true. I think that history will record that Johnson was much more of a local figure than we always thought. He was a Senate figure and not a national figure; he didn't know how to handle a national party; he didn't know how to handle people outside of the narrow acquaintanceship that he had, and this contributed to his downfall as much as the Viet Nam war.

F: Well, now then, why didn't Bailey move into this vacuum and run an organization despite the President?

W: Bailey never had the confidence of the President, I don't think; he was feared by the President as a Kennedy man, and also I think he was getting a little tired of it, and nobody was allowed to move without Johnson's direct concurrence.

F: That brings up another question, and that is, why would Johnson keep on Bailey, about whom he could rightfully have some suspicions, and so many other of the Kennedy people?

W: I think largely fear of criticism, fear of the Kennedy family's criticizing him and attempting to make life difficult for him.

F: He seemed to get the criticism regardless.

W: It did him no good whatsoever that I could see to keep them on; they took their independent positions when convenient anyway, and for which I don't blame them.

F: In 1964 you were one of the leaders of Young Citizens for Johnson. Do you want to tell us a little bit about that experience?

W: Well, this '64 was, I suppose, the easiest election the Democrats will

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ever have because of Goldwater, and it started the participation of young people in elections, I think; most of them were very excited about the danger of Goldwater, so it was much easier to turn them out in some quantities. We never achieved what I thought was the job we ought to do with the younger intellectuals and intelligentsia; it was done on the basis of old-line politicking that would get the mass of kids who like the hoopla and the bumper stickers and banners.

F: This is sort of a continuation in a sense of the Young Democrats?

W: Yes, I agree. I tried to do a little differently with our fund-raising group, the President's Club in New York, the younger members. I got a group of people together that ended up as the greatest enemies, I suppose, later on--what's loosely called "New York Review crowd," but we had a table at our dinner for Johnson with Robert Lowell, Bob Silver, Elizabeth Hardwick, and Podhoritz sitting right in the front row, which was where I thought people of that quality belonged. And I think if a little greater effort had been made with these people-- I think they would have understood what the Administration was doing, they still might have opposed it but at least not taken the kind of fanatical, violent opposition that they did. And they also might have, had we listened to them, had a very tempering effect on our policies. The President and his entourage did not appreciate or understand these kind of people, and I don't think that the efforts to attract them in a genuine way were much appreciated.

F: In 1964 did the young intellectual tend to have any enthusiasm for Johnson, or was it strictly the fact that the alternative was Goldwater?

W: I think they did when they understood what his legislative program was

going to be, particularly in the racial areas; but I think that, of course the anti-Goldwater feeling was so strong that it was a principal motivating cause for everyone. I did, in some of the activities we had, sense an enthusiasm for Johnson at the time though; he was a good-looking man to people then; what they thought was attractive then became ugly when they'd disagree with him. He was a rugged Westerner etc., and the folksingers that we got together for him--the Judy Collinses--they're now singing ballads against him--were quite enthusiastic. Joan Baez I remember being with Johnson for quite a period one evening and liked him, or seemed to.

F: Again, do you think that Johnson, with a little bit more exposure, a little bit more understanding, could have at least held the neutrality if not the downright support of these people, or do you think that there was a kind of a cultural gap there that couldn't be bridged?

W: I don't think that's true at all--that there was a cultural gap, unless he created one. I think his great mistake was not appreciating the value of these people; although they understood that most Presidents don't, and that Kennedy was a temporary aberration in our electoral process. He also didn't tell the truth, they felt, and that was his greatest downfall. He promised that we would not in effect intervene in Viet Nam and then we went ahead and did it, and that's something that they don't like. They can do it themselves, of course, but nobody else can.

F: How wide-ranging was this Young Citizens for Johnson?

W: Well, I want to differentiate between the groups. The Young Citizens for Johnson was run nationally by Birch Bayh and the young partner

at Arnold and Porter named Jim Fitzpatrick, and in New York by a man named Anfuso (sp), whose father was a Congressman; and I ran a smaller group called the Associates Division of the President's Club. You undoubtedly have much in your files about the President's Club, and this was the younger division where we try to get a somewhat higher level person--high in the sense that they at least had to have some money to put into it so they'd receive some success.

F: Did they still have the same financial arrangement that you had with the President's Club; was it a thousand dollars or more, or was--

W: No, we were a hundred dollars. We would have eliminated too many young people, but we got about a thousand of them together which I thought was a fairly substantial achievement for politics.

F: What kinds of people did you get?

W: We got businessmen; we got intellectuals; we got labor people--younger labor people, and then a lot of lawyers of course--lawyers are the most active cougars you know in politics, wherever you are.

F: A pretty wide congregation.

W: Yes. I thought so.

F: Then you became Assistant Attorney General in March of '65?

W: Yes.

F: And moved over to the Civil Division in the fall of '67?

W: Yes.

F: Now, just what did you do in the Civil Division?

W: Well, the Civil Division is really the government's law firm in the sense that it handles its business interests, claims against the government, claims by the government arising out of its business

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activities--contracting activities, frauds against the government--civil frauds, that is, by a government contractor who, let's say, misrepresents things to the government, and some of the representation of federal agencies where federal officers who were sued in their official capacity. We had the bulk of the Selective Service cases in the Civil Division; people would refuse induction for various grounds and were not indicted criminally.

F: Did you see a gradual blurring of the lines in the matter of conscientious objection on religious grounds during this period? It seemed to me that it was not as clearcut as it was in, say, the first world war or the second world war as to who is a conscientious objector or even what is a conscience.

W: That's right. The problem, I think, with the conscientious objectors is to find some objective test to ascertain the bona fides of the claim. Everyone is afraid that someone will claim conscientious objector's status merely to avoid the draft, for cowardice, or a lack of desire to be drafted. And I think that's the real reason that they had the religious scruples test for years because at least if a man was an adherent of a particular sect and we could prove that by the length of time that he was an adherent and the testimony of others who had seen him at meetings, we could then say, "Well, we believe him, that he is a conscientious objector." Now, when you try any other test, you have difficulties; that doesn't mean that you shouldn't recognize the claim, but the question is how to separate the true ones from the false ones. That's really, I think, the only issue. I'm sure that even General Hershey doesn't want to draft people who have a conscientious scruple against killing Vietnamese,

but how do you know whether their claim is true or not?

F: Or whether they just don't want to go?

W: That's right.

F: How do you know?

W: Well, I don't know that you can very well.

F: You never really felt any satisfaction in decisions, did you?

W: No, I don't in that area at all. I think the only way you can tell is by first having the board honestly listen to the person and try to determine what kind of a person he is. These are generally a younger man, so they're not as accomplished liars as people are when they get older. And you can also take testimony from the man's associates and friends to see whether he has had a history of this kind of belief against war.

F: In the matter of frauds against the government in not living up to contract provisions and so forth, how do these come to your attention? I know that every agency has its own solicitors and every Senate committee is poking around on something; how do you sift and get something to you?

W: Well, the agencies are the ones who in the first instance determine whether there's a suspicion of fraud. We never do that; we're not an investigative agency.

F: You don't really initiate in this then?

W: They refer to us for litigation, for the bringing of lawsuits which we then evaluate to see whether we have a claim and then sue. Fraud cases are extremely difficult ones to prove. The Criminal Division usually has first crack at them, and they more often than not decline prosecution because having to prove these beyond reasonable doubt is

a very difficult problem. No matter how guilty you may know a person is, there's no point in indicting him when you know you haven't a prayer of convicting him; so then you go the civil side where you only have to prove by preponderance of the evidence that the man's guilty of fraud.

F: Have there been any noticeable evolvments or changes in the response of firms, corporations, people to the investigation by the Civil Division?

W: Well, I think there's a much better climate than there used to be. First of all, there are a lot less frauds against the government; those that do exist are much more subtle, I think, than they used to be. They're not these out-and-out blatant cases that you used to get of people just bribing contracting officers. That's partly a result of a much better system in the procurement agencies; their contracting officers are supervised much more rigidly. But I think there's a real improvement in the business climate around the country.

F: It wouldn't have been your function though to examine contracts after they're made to see that the contract is drawn correctly and that sort of thing?

W: No. That's all done by the agencies. I'm not sure that's wise; I think that the Justice Department has had its function cut back some as the government's lawyer. I think it's very good to have an objective look at major contracts by an agency that's not directly involved. I think that the Department of Justice ought to be used more for that sort of thing.

F: Was conflict of interest one of your concerns?

W: No, it wasn't, not directly. I suppose that would generally be a

criminal problem if there were a serious conflict of interest that was abused, so we didn't review such matters.

F: You didn't look into that?

W: No.

F: What about just general matters of ethics?

W: Well, we would occasionally get complaints against judges in their activities, and we would occasionally be called upon by judges to defend them. There were a few that were being sued by people for alleged abuses of their courtrooms; in one or two cases we did defend the judge, and in one or two cases we didn't. Judge Cox of Mississippi, I remember, was sued by a civil rights group--I can't remember the precise question that he was sued about, but in this instance no matter what your view of civil rights was, Cox deserved a defense and we did help him in his defense.

F: Would you conceivably have turned down Cox? I mean, you weren't committed to defend him regardless?

W: It's a kind of comedy among the branches of government. Similarly, we're called upon to defend Congressmen occasionally. We do represent Senate committees when they have to enforce their subpoenas; this McSurely case which is now in the courts is one that we brought where some people--I recall this subpoena issued by the McClellan committee in an investigation of some riots in Lexington, Kentucky; and the sheriff in Kentucky seized a lot of papers of these people without a warrant because they were being indicted under the state sedition law--the state sedition law was immediately thrown out as unconstitutional by the trial judge, but the sheriff kept the papers, and the Senate committee subpoenaed the papers from the sheriff.

McSurely said, "We should have an opportunity to fight production of the documents here. We don't have them. They were seized by an illegal search, and the sheriff should turn them back to us, not to the Senate committee." The Senate, I think with some reason, felt that they'd burn them if they ever got them, but the issue is still in the courts. I don't want to go into it in any greater detail.

F: Was there an attitude in the Attorney General's Department that it was at loggerheads with some of the Supreme Court decisions on the limits of rights of investigation, taking testimony, and so on?

W: No, I don't think so. I think in general the people in the Justice Department agreed with the Supreme Court decisions and accepted them. Katzenbach had more reservations than others about their wisdom, I think. He said that the court was being a little bit dishonest in not admitting that the effect of their decision would make it more difficult to apprehend and convict criminals. He said that was perfectly all right with him if you were willing to exalt the Fifth Amendment so that it interferes with the prosecution of crime, but you ought to at least admit that's the effect of your rulings and your feelings. Actually, I think he was wrong; I think a lot of prosecutors have the experience that they don't interfere quite as much as they thought.

F: Have you developed a somewhat commonly held feeling that the Fifth Amendment has been diluted through the years until it is no longer as viable as it once was?

W: I don't think so. I think the Fifth Amendment--you mean, viable in

the sense as useful as it was?

F: Yes.

W: Well, I think that we have expanded it in an area that it wasn't intended to cover. Originally, of course, I believe its purpose was political; that is, you can't impel political prisoners to bear witness against themselves--that was what was going on. We had extended it to areas of pure criminal law where there isn't that issue and where the state isn't as likely to be compelling testimony in an unacceptable way; I don't think the third degree exists the way it used to any more, so the courts are writing decisions for problems that are out of date.

F: Did nominations for justices cross your--?

W: Well, not officially. I was consulted occasionally by the White House.

F: In what capacity? Just asked what you thought of the man, or did it go deeper than that?

W: Well, in New York appointments, the White House would frequently consult me, or the Attorney General--Katzenbach would. Mr. Clark didn't; he didn't consult anyone because he thought he was the only man who knew anything about who should be appointed. But when the White House would get these appointments, they'd go directly to me, knowing it would be futile to go any other way.

F: Did the original Fortas nomination concern you one way or another?

W: No.

F: So you had no hand in that?

W: No.

F: Was there any feeling as far as you know around the Department of

Justice that Mr. Fortas was vulnerable?

W: No. Well, I can't say no. I had no knowledge of it. I don't know what knowledge that--

F: This wasn't corridor talk?

W: No.

F: So that in one sense these later charges came as a surprise.

W: They came as a surprise to me, yes. I hadn't even known that his firm represented Wolfson.

F: In the beginning of '68--as you know, on March 31 Mr. Johnson announced that he was no longer going to run. About three days before that you were in New York, as I recall, with him or were trying to set up something in New York for an appearance.

W: I think that's right.

F: Tell me about that.

W: I just have no recollections. It was just a routine Presidential visit, I guess, and as I remember. I was trying to make arrangements. I had no knowledge--

F: You were there with O'Connor, that's John O'Connor, I guess, and with somebody from the Economic Opportunity Office.

W: Now, that you've stimulated me to recall, I think it was not a political appearance but a non-political appearance he was going to make; but of course it was very relevant to the renomination campaign. As I best recall, we were arranging for something; I'd have to be refreshed more to remember--

F: Well, now with your New York contacts had you begun to feel that maybe Mr. Johnson should get out? Did you think that Kennedy was going to take him? What was your assessment of the situation at that time?

W: I felt we could hold a bare majority of the New York delegates for Johnson, and perhaps even more; that some of the boroughs would remain loyal to him, and certainly a great majority of up-state New York would remain loyal to the President and he would have had a majority of the New York delegation. Remember in our primary that the opposition vote would have been split, whereas Johnson's would have stayed together I think.

F: Were you close to Bill Moyers?

W: At one time.

F: Why did he leave Johnson?

W: I have no idea. I suppose Johnson finally discovered that the credibility gap wasn't all his doing, and that Moyers was interested in Moyers maybe a little more than he was in Johnson. I don't condemn that--

F: I'm leading the witness to a certain extent here, and maybe he won't be led. Have you gotten the feeling that Moyers was beginning to have political ambitions of his own?

W: There's no question that he did.

F: Do you think that he thought--did you have any evidence to believe that he thought that maybe his star lay with another group within the party, namely the Kennedys?

W: I think there's no question about that, that Moyers was very interested in Moyers and he realized that the incumbent was not the man of the future, so that he would go to the man of the future to take care of his own political ambitions.

F: You and your father have an association with Paramount Pictures, Arthur Krim has one with United Artists, Bob Kintner a television executive--

how do you account for the fact that with people like this around the President he continued to give such a generally poor TV image?

W: Well, he absolutely declined help in these areas, I know.

F: Do you think he was just sensitive to indications that maybe he could be improved?

W: I think that's right. He didn't want to face the fact that he was poor until it was too late, and I think a lot of people around him in that area of public relations didn't have any perception of these things. For example, I brought down to the White House a man named Abe Feder who is the great lighting engineer of this country. His theatrical work includes "My Fair Lady"; his lighting includes Kennedy Airport and some of the biggest buildings in the country. He's really a great genius in this field. And he was going to come down and for nothing, except for his expenses--the installation, donate his time, set up the East Room so that the President would look better in his press conferences because he felt that television lighting in there was so bad and the changing in cameras every time made the lighting obsolete; he'd do this for nothing, and he had a design made--a beautiful model, spent many hours on it, and he was just given utterly short shrift. I was offended by the way they treated a man who was giving his own time because he liked the President. He had some idea for doing up the President's office, similarly for nothing, which he thought could make him look much better in his public appearances.

F: When you say "they," you're talking about the President's staff?

W: Yes.

F: In your position in the Justice Department, did you find that the

staff acted as sort of an enclosure around the President that was hard to breach?

W: I thought that when Jack Valenti left the White House that the operation declined considerably, and it never recovered. I think Valenti was a broad-minded fellow despite all this image of him as a sycophant; he was one of the few people that was willing to warn the President and tell him--warn him against mistakes. Jack Valenti did one of the most courageous things I ever saw but the President, not being literary, he never got it. Jack was reading Macaulay at the Ranch one weekend, and he read to the President a passage on the courtiers around Charles I and how any great leader must beware of his immediate entourage because they're always looking out for themselves and isolating him from the truth; and that of all the people he should be on his guard against, Jack Valenti was the first, which was what Jack was telling him.

F: The President just thought it was good history and had no pertinence.

W: That's right. And I always liked Jack for that.

F: From your nearness, how do you manage this business of access of information and feeling--you must have been in a position to get samples of feeling on what the President ought to know, and yet it does seem to me that the President is fenced in by people who, like him, don't circulate.

W: That's right. I don't know how you do that except that--

F: I think this was a Kennedy fault also.

W: I'm not so sure about that. He seemed to have a very much broader acquaintance than Johnson did. He had people in academic life, in business life, the labor leaders, and the minority group people. Johnson

would only talk to established figures in all of these areas; he'd talk to Roy Wilkins, but he wouldn't talk to Stokely Carmichael, for example, because they had bad experiences and he didn't like the difficulty in handling them. And academic people, he didn't like at all. He didn't speak their language, but they had much to tell him. The way to do it is to come to that office with a broad acquaintanceship in the first instance. If you don't have it, the more I think about it, then you shouldn't be President. I don't think Nixon has got a sufficiently broad acquaintanceship.

F: In one sense then, Johnson was handicapped by being too much devoted to the Senate during his Senate years, you might say.

W: I think that's right. He was a very parochial politician. He knew some businessmen around the country; now, these are parochial people too, generally. But whole segments of the country were completely ~~terra~~ incognita to him, and that was very bad. Therefore, he'd get an Eric Goldman because somebody told him that Goldman was a man to get when obviously Goldman wasn't the man to get. But if he'd known a few of these people, he'd have had a judgment himself. And when he was in a position to make a judgment, Johnson was usually pretty good. It was only when he relied on people he didn't know that he, I think, made mistakes.

F: Getting back to the Attorney General's department, did you get the feeling that Katzenbach was moved over to State in order to make room for Ramsey Clark, or do you think that this was looked upon as a much more significant position for him the way the world was going at that time?

W: Well, I think that there was a bit of mistrust of Katzenbach fostered by Mr. Clark because I saw him at times try to say things against him

that I knew not to be true about his loyalty. Nick Katzenbach was the most loyal man Johnson had in his government ever, utterly devoted to his interests and utterly resistant to any pressures to the contrary. So his confidence in him was undermined a little bit.

Secondly, even though Johnson may have had his confidence undermined in him, he appreciated the man very much and I think felt that the Under Secretaryship was important. After all, some members of the Cabinet allegedly had actually volunteered to do it, and therefore Johnson must have realized it was a more important job than he might otherwise think. I think it was too bad that Katzenbach left there for the Department of Justice.

F: You think the Justice Department suffered by the transfer?

W: Yes. I don't think Johnson was particularly anxious to appoint Clark; he waited, after all, several months before he did it. I also believe that a major reason for appointing Clark Attorney General was that it necessitated the resignation of his father, Justice Clark, from the Supreme Court, thereby enabling President Johnson to be the first President to appoint a Negro, Thurgood Marshall, to serve on the Court.

F: Did Johnson take much of a hand in the Department of Justice as such, or did he pretty well leave it to run its own operation?

W: I think he would have liked to have, but he was excluded from it and took things that I wouldn't take from a subordinate employee. For example, most of the major cases that were brought during Clark's tenure were brought without the President's knowledge, and they were often embarrassing to him in the sense that had he known about them he could have prepared the public or the people involved for it.

F: For instance?

W: Well, for instance, the Spock indictment. The President didn't know that Spock was being even investigated until one hour before the

Grand Jury returned with an indictment. Some of the major anti-trust cases that involved people that Johnson knew; he would not have interfered with these cases, I am sure, but he should have known about it and should have at least had the courtesy from his Department of Justice of knowing about major cases. This was not done.

F: Was this just a lack of a proper channel of communications, or was it an ignoring of the proper channels?

W: A total ignoring of the proper channel of communications.

F: Is this an attempt by the department head to establish an independence of the Department of Justice, or is this--?

W: Oh, yes. It was the same thing as our other friend we talked about, Mr. Moyers, I think, of trying to establish a position for the future. After all, Johnson had merely made this man's career, and what more can he do for him? I didn't like it, and I couldn't play that way. The first week--I've not been meaning to unburden myself of this, but the first week that this man, Clark, was appointed, I was sitting in his office when he gave me a lecture on Johnson's faults; that Johnson didn't respect original ideas or independent thinkers was the burden of the lecture the first week, this man had been appointed by Johnson. I thought Clark himself was not very original, and therefore maybe that's why he was appointed if that's what Johnson's faults were. But it shocked me very much.

F: In a situation like that, what can an Assistant Attorney General do? Are the lines pretty well marked? You can go so high and no higher in the sort of ethics of the operation, or can you go around a figure that you think sort of stands in the way of getting on with proper operations?

W: Well, I always felt that an Assistant Attorney General appointed by the President and not by the Attorney General, therefore to that

extent he has an independent base, but it's all a question of relationships really. If he has a relationship with the President or his staff, then he can go there. I don't there's any ethical consideration to prevent it, being a Presidential rather than a department head's appointee. The last person to try that was Norman Littell (sp) in 1944, I think, when he went to the President over, I think, Biddle's head and Biddle fired him the next day, and the President acquiesced. So most Assistant Attorneys General don't do that.

F: Did there tend to be schisms or cliques within the Attorney General's department, or were you all more or less united and--to use an awfully low term--knew your place?

W: We knew our place because we were not consulted on any matters by Clark; we were consulted by Katzenbach on everything. I thought Katzenbach ran that department in an absolutely marvelous way, and that he just picked everybody's brains, ran it as a board of directors where we all contributed to major decisions because all of us, after all, are lawyers as well as specialists. So I was very impressed with that.

F: Well, what did Katzenbach do? Did he hold a weekly, monthly, or some kind of regular clearinghouse?

W: Well, we had a lot of dreary clearinghouse staff meetings that were pretty boring because some fellow from the Parole Board would go up with some charts and tell you how many people had been paroled last month. But when there were major issues of interest to the department on the whole, we'd be consulted either individually or as a group, then asked actually for our opinions on how to proceed on matters. Even if it cut into someone else's area of jurisdiction, others would

be consulted on that problem. Katzenbach was right in doing that; he knew that people who were tax lawyers might happen to know something about civil rights too, or might have good judgment; and he always realized that his own judgment was a human judgment and subject to error, so he had better get as many opinions as he could. It was a very intelligent way of doing things.

F: Do lines tend to fuse and overlap between the several segments of the Justice Department, or are things so laid out that it will run itself?

W: Well, I don't think I understand your question.

F: Is there a question, for instance, sometimes of who has jurisdiction?

W: Yes, that comes up often, I think, in a number of areas, none of them really of earth-shaking importance, but there have been squabbles. I know when I was in the Land and Natural Resources Division I squabbled with the Civil Division over who had the jurisdiction over water pollution questions, and of course I won, and that was fine until I went to the Civil Division where I then regretted having fought this out with the Land and Natural Resources Division. This came up in a rather bitter fight over there since I left over the Santa Barbara oil pollution where it was taken away from Land and given to Civil. There are problems over criminal tax matters whether the Criminal Division or the Tax Division should have them. And there are lots of overlaps that aren't a question of exactly jurisdiction, but issues that are involved in both Civil and Criminal, or civil rights litigation. It's not a serious problem.

F: Santa Barbara of course comes to a climax after you leave, but on something like this the Secretary of the Interior approves the lease.

Do you review it, or does he have the authority to go ahead and make these leases off the coast of Santa Barbara and then you are faced with it only if something goes wrong?

W: We only are faced with it if something goes wrong. We are consulted about the basic legislation, let's say, that may give the authority to issue these leases, you know. We helped with the Submerged Lands Act and any amendments thereto so that at the legislative level we have some influence but in the actual leasing, no, or the contracts.

F: In the matter of air pollution again, do you intervene only when my particular agency claims that you have polluted the air?

W: Yes, except again in the drafting of legislation. I think in some of the Johnson efforts we had a very large role in these task forces that worked on air and water pollution legislation.

F: What task forces did you work on?

W: Well, I worked at great length on one headed by Gardner Ackley that reviewed the entire environmental pollution field--air, water, the automobile dumps, for example, which isn't really air or water pollution as such, but the aesthetic pollution of the country. A great deal of very useful studies were made in these areas.

F: From this pollution study of yours, did you get the feeling that this is soluble or that there is a sort of vested interest here that can't be overcome.

W: I think that it is soluble; it seems to me that we're going about it in a very complicated way that may be overly complicated. These river basin studies that drag on for years--it might be a time to grab the bull by the horns and just say by a certain date this company had better stop polluting, or we'll put them out of business. Now,

American technology always responds in time to a threat of this nature, because then they'll spend enough money on research and development to cure the problem within the time specified.

F: I drove up to New York recently and ran into that usual Newark-Elizabeth-Jersey City haze all through there which you can taste and see. You get the feeling that things have not improved, and yet you know they're working on it. What was your function in this case? I mean, what could you do?

W: Well, air pollution really is not solved from the point of view of legal control yet because there's a feeling that technology just does not exist.

F: Is this rationalization or--?

W: Well, I think it's rationalization for this reason; that if the demand for remedial action were pressing, then the technology would be solved, but I don't think there's quite the effort going on that there ought to be because there's not the immediate threat of government intervention. If these New Jersey stockyards and glue factories knew that they'd be put out of business within six months, they'd be really working hard on how to control their emissions, but they're not. Conn Edison gets attacked all the time and nothing ever happens, because the regulatory agencies aren't prepared to shut them down. They can't because the city needs power.

F: Did you get the feeling this was window-dressing on the President's part, or that he actually did want to clean up the country?

W: I never felt the sense of commitment that I'd like to have seen. There were a lot of studies going on, but there was never a feeling of urgency or need. I think Ed Muskie was trying his best in the Senate

in this area particularly, but very few people shared his real concern that I saw. They gave lip service to it, but not much else.

F: Air pollution is practically, as you know, a product--that is, the issue of air pollution is a product of the '60's.

W: Yes.

F: I think if you look back through your indices you won't find it's in anybody's index prior to some time, really around '63-'64.

W: That's right.

F: Is this something that you think Mr. Johnson was aware of as an issue, or do you just think it was sort of handed him by other people and he had the good political sense to catch on to it?

W: I think the latter is the case, really. I think Mrs. Johnson, once she became aware of it, became passionately involved in it, but I don't think he ever--Of course, again, all you can say about the Johnson Administration is you really can't answer these questions because the absorption with the war eventually overrode everything else, and therefore you never know what would have happened had the President been free to devote himself to the other issues as he wanted to.

F: Would you have been in a position yourself to have proceeded against someone like Conn Edison?

W: We didn't have the legal tools. One of the things I was trying to do was to see that we did get them by simplifying the procedures.

F: Is this a matter of procedure, is this a matter of Congressional legislation?

W: Well, legislation of course, which all these things would have required. But the time period involved before the Department of Justice could

act was so long that very little could be done. There wasn't even legislation, I found, and I'm not sure that Congress has done anything about it yet, to cope with actual direct perils to health, at least from the federal point of view. There were probably local ordinances that could do it, but the federal government had no authority that could stop a plant that might be dumping potassium cyanide into a navigable stream. It would still have to go through the rigmarole of the water quality or the Water Pollution Control Acts. And I thought you ought to be able to run in with an injunction immediately in that. The same with admissions of dangerous substances in the air. Supposing one of these chemical warfare plants started belching nerve gas, and the government had no tools at its command to stop that.

F: Did you perceive any changes in the injunctive process while you were in the Attorney General's department?

W: No, I don't think it was a time of great legal innovations.

F: In your opinion, does the Attorney General have sort of a philosophical leadership, or should he have a sort of philosophical leadership position in that he does suggest changes in legal thinking and legal procedures and so on?

W: Absolutely. I think he has got to lead the country in its thoughts on these very deep legal questions. I felt there was none of that leadership coming out of the department in the sense that there is no sense of urgency about the problems of crime in the country and anything else. The attitude there was it's exaggerated, and we must keep a damper on public feeling against crime, but the statistics were there. It lived in a sort of dream world, I thought during my

tenure, that the nice liberal things that we all liked to be happening were all that were happening and bad things weren't happening--just a figment of the imagination of the right wing press, which was wrong.

F: So to a certain extent the Attorney General's role has become a defensive one?

W: I think that's what it was, and it should be an affirmative one of trying to identify and deal with these national problem. And it's better for the Attorney General to admit that there's a terribly rapidly increasing crime rate and try to suggest solutions to it, rather than to play the role of the great liberal restraining the public. Because it doesn't help restrain the public and without the leadership from Washington, the forces of repression do much better, it seems to me, and that's all the result of the what I think rather flaccid attitude of the Department of Justice while I was there. Generally we've got a lot of law and order and vigilante groups around the country because they despair of any leadership from Washington. If Washington had provided sound and sensible leadership, we wouldn't have all this repressive philosophy around the country. But living in a never-never land that there is no crime increase when there is a crime increase as any fool can tell you, and that any secretary who has been molested going home from work--my mother was a secretary forty-five years ago, and she wasn't molested on the way home from work in Chicago, so at least in forty-five years there has been an increase in crime. And why would we pretend that there wasn't? And I was really shocked and astounded by it.

F: Did this ignoring of a crime problem show in the conferences you had with the Attorney General?

W: Yes, very definitely so.

F: I mean, this wasn't an outside posture, but it was also inside?

W: No, it was very definitely inside. I remember I was up with him one day urging the prosecution of Mr. X, and I was told that I was paranoid for thinking that Mr. X alone was such a great threat to our nation, that Mr. X was just one man, that I was reading these fervent newspaper accounts but not looking at the truth. The next day X exerted a crowd to burn down some things, and they went and burned it down. By gosh, they burned it down, and that was my--I feared because I was paranoid; but he actually did what I said he was going to do. I got very small satisfaction from being right, I'd rather have been wrong.

F: Do you get a feeling that there is a solution to this alleged stranglehold that the racketeers have on a lot of legitimate business enterprises in this country?

W: It's going to be extremely difficult to do because these people are very cleverly controlling their operations so you can't get evidence of it as a rule. I think that you've either got to make a decision to use wiretaps and surreptitious devices so that you can actually overhear them, or you've got to reconcile yourself to having them around for a long time. It's too profitable for them to abandon, and it's too easy for them to conceal unless we use these more sophisticated devices. The basic decision has to be made, "Would you rather have the Mafia in control of industry, or would you rather take the risk and use wiretapping," which no one including J. Edgar Hoover likes very much.

F: From what you know about Attorney General Clark, was his opposition to the use of the wiretap an emotional commitment, did he have sound

legal logic behind him?

W: He just didn't like it, that's all the impression I got. He was not willing to consider using it.

F: It was not really a discussable topic?

W: No.

F: In things like this where you had maybe an opposite view, at least a tangential view, could you discuss your opposition?

W: No. No, it was not considered.

F: It wasn't then a regular feeding upward of opinion?

W: No, and offers were rejected; that is to say, there was a genuine desire not to have any communication. The door was closed.

F: Do you think the White House was aware of this?

W: No.

F: So that in one sense you've got the same sort of isolation and loneliness in the Attorney General's department again that you have over in the White House?

W: Yes. But here it was willful, it seems to me. In the White House it's almost structural because of the nature of the Presidency and the demands on the time. The Attorney General just isn't that busy so that he can't see people. And Katzenbach did it, and Clark didn't do it, and certainly Katzenbach was no less busy than Clark.

F: When you were there with Katzenbach at these occasional, sometimes boring meetings that you had, was there a fair amount of heat and light exhibited?

W: Absolutely. Often there were some very violent arguments in these sessions trying to thrash out approaches to problems, and they generally resulted in correct decisions, I think. And Katzenbach was very

anxious to make sure that he had everybody's thinking.

F: Did he sit there as a kind of moderator, or did he listen--?

W: He was an active participant himself with his own ideas; he had the courage to subject his own ideas to scrutiny.

F: Would he originate certain ideas and put them out?

W: Absolutely.

F: Say, "What do you think of this?"

W: Sure, and he was willing to have them shot down if they didn't work, which to me was his most endearing quality--a man utterly without intellectual arrogance.

F: So that he would retreat if he had taken the wrong road?

W: Absolutely. That was one of the great qualities of Katzenbach.

F: You would argue then that these various departments, from your experience with one of them intimately, are not sort of automatic progressive machines, but that the top leadership is quite vital?

W: Absolutely. Oh, yes. In certain areas they can function without assistant attorneys general; in very many areas they can function without assistant attorneys general, except that there is a need for men and ultimate responsibility. And the bureaucratic mind would love to push decisions elsewhere. The lawyers in the department, the younger lawyers don't have these problems, they're good lawyers. But occasionally there's a need--there's a basic policy question, "Shall there be a program of prosecuting draft evaders," or, "Shall there be use of wiretapping," which are not bureaucratic questions; they are questions of public policy. For that you need political leadership.

F: Within your two divisions that you've headed, did the man who was Attorney General make his presence felt to people in the lower echelons?

- W: I think in Katzenbach's day, yes--in Clark's, no. Katzenbach was willing to show a real interest in the work of these divisions, and Clark didn't. Clark would have everybody to dinner or to lunch once a year--all the leadership of these divisions, and that would be the end of it.
- F: Just the leadership of the divisions.
- W: Well, the section chiefs and what have you. Everybody would show up at the Christmas party.
- F: How did you let information filter down to the people within your division?
- W: I'd try to see them all the time. I used to--instead of calling people on the phone, I'd go into their office and chat as much as I could and try to use people for what they could contribute to ideas in the division. Once again, the good lawyers I'd use for every kind of question, not just questions in their area. And I think this was appreciated by the staff and also very useful to me. You're supposed to grab your talent where you can find it.
- F: By training--instinct, lawyers tend to be the most political of all animals. Is the Attorney General's department something of a political center which fans out over the country? Of course you are to a certain extent peripatetic, you have to get out and do things, and keep up certain kinds of contacts. Or is the Attorney General's department no more political than any other?
- W: Well, I think it has been very nonpolitical in recent years. I think there are ways it can be political that are desirable, and there are ways it can be non-political that are essential. To the extent that it's involved in the litigation of cases in court, it has got to be

absolutely non-political. You cannot try your cases with the thought of who the parties are, or what the political consequences are; if the law has been violated or if the interest of the government has been neglected in some way, you've just got to be non-political. On the other hand with the appointment of judges and with the appointment of U.S. Attorneys, you can be political to the extent that there's nothing wrong with appointing a Democrat if you're a Democrat provided the man is qualified to be a judge.

If you noticed, just yesterday Nixon had a sort of informal press conference where he threw out the names of all the people he has considered for Chief Justice and even for Associate Justice. They all are competent men, I think, and there wasn't a single Democrat on the list. That doesn't shock or offend me except to the extent that I think the Democrats should be the only ones allowed to hold the Presidency and make these appointments. So it can be political in that sense. And also the Department of Justice can serve the government's political interest very much by having people from all around the country who can be the focal point for inquiries and for political discussions; lawyers, as you say, tend to be political people and where we are insensitive to these issues. There's no reason you can't do that and still be absolutely impartial in the day-to-day conduct of your office.

F: Did you ever sense any White House pressure on the Justice Department either to put the heat on in some case or to let up a bit?

W: No, the President, I think, has an unblemished record for not wanting to interfere in any improper way and in any conduct of the Department of Justice business. He was alleged to be the most political

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wheeler-dealer President that we have had; I think it's false, where in other ways I think he tried to be too non-political, to keep his hands off too many things that were properly his concern. The government is a weak government if it doesn't have the power to get itself reelected and doesn't have a base of support. I don't share this fear and hatred of the basic political things that go on in this country. I think that's how you build a government that can function. Johnson, by cutting himself off from any kind of a political base, found when the going got rough that he had no friends and no power base around the country--I mean, no one loyal to him or bound to him by ties of many years of work or of gratitude.

So, as I say, even had the war in Viet Nam been right, and I don't think it was, Johnson would have gone down because he didn't have anybody supporting him when politics got too hot. I think given everything the same as it is now had the party been loyal to President Johnson because of his recognizing them and helping them politically, helping them with funds, which he never would do, helping them in their local elections, which he never would do, he would have been renominated easily even though the feeling against the war presently existed. But he cut himself off from this. Now, some people will say maybe it's a good thing because had he been reelected, he would have carried on the war. But I don't agree with that, and it's a bad thing to let a great political party decay, so that it'll have to be rebuilt before it can be a force to win elections again. Poor Humphrey got a party that was in terrible shape and in an election as close as it turned out, had there been a Democratic party, he would have won. But I don't think there was one in New York, for example--

with a coherent body that could really get together and run an election.

F: Did you have any reason to believe that Johnson sat down at the ranch during the '68 convention and ran the show in Chicago which was sometimes charged?

W: Well, I think he probably did, yes. I saw little evidence of it; I don't think he was masterminding it in an evil sense, I just think he wanted it to be a coherent thing that didn't dissolve into anarchy. I think he was horrified at what happened with the police there. I don't think that within the hall there was the railroading that people say at all. I think that it was an open convention in the sense that everyone had access to the microphone, to the floor, and to present their candidates to the delegates. Security provisions were not designed to impede the democratic process on the floor; some delegates were annoyed at having to show their cards. Personally I think that if they didn't have the security provisions, the convention could have been disrupted violently and that would have been bad too. So the purpose of these restrictions was not to impede the delegates from exercising their functions.

F: I promised your secretary I'd get you to your appointment at 12:30. Thank you.

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By Edwin L. Weisl, Sr.

to the

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