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RAMSEY CLARK ORAL HISTORY, INTERVIEW V

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- (3) I hereby assign to the United States Government all copyright I may have in the interview transcripts and tapes.
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Signed by Ramsey Clark on September 11, 1978

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ACCESSION NUMBER 79-37

INTERVIEW V

DATE: June 3, 1969

INTERVIEWEE: RAMSEY CLARK

INTERVIEWER: HARRI BAKER

PLACE: His home in Falls Church, Virginia

Tape 1 of 1

B: This is a continuation of the interview with Ramsey Clark.

Sir, to start in on the whole general matter of law enforcement and what became the catchword, "law and order," one of the major legislative matters in this, I assume, is what became the Safe Street Act of 1968. Did you participate in the drafting of that bill?

C: Yes, the President had annual crime messages to the Congress in 1965, '66, '67 and '68. And they developed really an enlarging scheme of federal contribution to law enforcement and criminal justice. The '65 message started the Crime Commission--the National Crime Commission and the D.C. Crime Commission. The Crime Commission reported back really in 1967 basically, and well before it reported back we had developed legislation that would provide federal funds for state and local agencies of criminal justice.

B: By we, you mean the Justice Department had already developed this legislation before the Crime Commission report?

C: Yes. There's a very close relationship between such a commission and the most closely related executive departments in terms of personnel, staff support, and constant communications actually. A major part of the input to the Crime Commission and the Kerner Commission, the Civil Disorders Commission, came from the Department of Justice. The Safe Streets bill, so-called, was sent to the Congress with the crime message in '67.

B: Were there any significant differences between your views and Mr. Katzenbach's views on the draft on the proposed legislation?

C: Well, I don't think there would have been. I detected very little difference in our general approaches. As a practical matter, he had left the department in late September of '66 to be under secretary of state. He remained as the Crime Commission chairman because the Crime Commission really had almost completed its work then. They were in, drafting of all the reports, the final reports. But the time that he was able to devote to this was very limited. The best that I can recall is that we had conversations over the phone, and that he may have sat in two conferences at the White House where a variety of people from over

the administration--fellows like Charlie Haar from HUD; people from HEW, because of the close relationship of Juvenile Delinquency Prevention Act, and the Bureau of the Budget people would sit in.

I detected no note of significant difference at all. The areas of argument had been pretty much outlined. We had gone through a very traumatic experience in late November and early December 1966 when the Congress presented the President with the so-called D.C. Crime Bill, which contained some very repressive and in my judgment several unconstitutional features. It attempted to deal with the so-called Mallory decision and interrogation of criminal suspects. It provided among other things for the prevention of publications on the ground that they would be pornographic before they were printed, which is contrary to our constitutional principles--other things. The emotional climate in the country about crime had been so great and people had focused so much on the nation's capital in my judgment from racist motivations in part. It was really a continuation of the old southern belief that the blacks were incapable of self-government. Of course, they never had a chance for self-government or even for government in the District of Columbia. People always liked to focus on the nation's capital as a crime center. The statistics never supported it although there's more crime here than you'd like, as there is in every place in the country. The crime bill that was presented put a heavier burden on us in drafting the legislation to satisfy the growing militant interest in harsh measures.

I think we recognized from the beginning that a major fight would develop on the state bloc grant problem. I remember writing the President a memo in December, I think, of '66 stating in my judgment this would be the major fight. I felt that state bloc grants would be exceedingly harmful and of all activities of local governments, perhaps police activity is the most, because first, states have a fairly limited police role. There are, say, nine urban policemen---municipal policemen or county policemen for every state policeman in the United States. Seventy percent of all of the police activity of the states is highway control--traffic control. Less than a majority of the states even have state police with general police power.

B: Did Mr. Johnson encourage you to go ahead even though this and other features were sure to provoke controversy in Congress?

C: Yes. I don't think anyone felt there was any choice but to go ahead. The needs of the country were pretty clear. The buildup for repressive legislation would be even greater without affirmative action by the administration. We had been building up toward this for a couple of years anyway. So we went forward.

B: May I ask here because it's a part of the bill: Am I correct in assuming that your views and those of President Johnson on electronic surveillance coincide pretty well exactly?

C: I think they coincide almost precisely, with one area of possible exception. In the national

security area I felt that we weren't sufficiently critical, and I did not authorize a good many taps that were requested in that area. And he was under very great pressure from Vietnam and all, and the military establishment, and from National Security Administration, the CIA, and the other agencies who, you know, do everything and know everything that we could in the national security field. This made a fairly difficult area to hold in, but we held. He talked to me about it a time or two, but he never really even reexamined my judgment as far as I could tell. Certainly he never gave me instructions to the contrary to what my judgment was, and we kept a very, very low ceiling on them.

B: You did authorize some in the area of national security?

C: Yes. There would probably have been an average of fifty going, with not a lot of change. I doubt that of the fifty half a dozen would involve a turnover, and the others would be pretty consistent. Some of them had been on for years.

B: Getting slightly away from the subject of the bill, but while I'm on this, how do these disclosures occur; that is, would a case that's pending in the Justice Department, tell the court that certain evidence involved in the case has been acquired by electronic surveillance as the Hoffa case, the Baker case--are those taps predating your tenure?

C: Yes, all of those taps predated the first of July 1965, which is the day of the President's order with some exceptions. The exceptions arise this way. We forget how many people use a telephone; we forget how many lawful reasons there can be. Well, there have been taps on foreign establishments--embassies, U. N. posts. Thousands of people call embassies for a variety of reasons. A mother wants to get some information for a paper that her son's writing on the country; a person's traveling and he wants a visa. It has nothing to do with his conduct. We've had some cases where several years after a person has made a call to travel, say, to a country in eastern Europe--he's involved in a stock fraud charge or something like that. Well, under the law as it presently exists even though there's no possible relationship between his having been overheard calling this embassy to inquire about olympic games or when's the best time to visit a place and what kind of clothes should you take, in some charge of crime you've got to reveal the fact that he was overheard.

B: And these would have been people who would have in effect stumbled into attack--it was in effect for national security purposes.

C: That's right. The tap wasn't on them; they just happened to call into the place where the tap was. Now, that doesn't apply to Baker and it doesn't apply to Hoffa. Those are separate matters. I guess there was one embassy tap involved in the Baker case too, but this all predated the President's order. Anyway, the President felt very strongly I believe as strongly as on almost any issue that I dealt with him consistently on, that any wiretap, any bugging in the domestic area was just unthinkable, and he would really become

outraged about them. He thought they were terrible things, and he "didn't want to live in a country" was one of his phrases--Said, "I don't want to live in a country where they do that sort of thing."

B: Another feature of the bill, at least as Congress began to get hold of it, was an attempt to mitigate the effect of the Supreme Court procedural decisions on the rights of suspects and so on. Did you ever discuss that kind of thing with the President?

C: Not at great length. I think we felt somewhat differently, perhaps not on the merits, but politically he could see the very great pressures that had been built up in these areas. These were never any part of our affirmative program. Our affirmative program contained as its central element federal financing, and it was our hope to double the state and local increase in expenditures for police and prosecutors and courts and corrections. There was about a five percent annual increase at the time of the bill, and we hoped to at least double it and get it up to ten percent a year, which would make quite a difference in a few years in terms of professionalization and science and technology and new standards in salaries for police and things like that.

Important elements of our bill were gun control legislation, the right to privacy act which was our prohibition of wiretapping and electronic surveillance, some drug control provisions, some reorganization plans like the merging of the Bureau of Drug Abuse Control in the Department of HEW with the Bureau of Narcotics in Treasury, and transferring them both into Justice, which was successfully accomplished. We knew from the beginning that there would be an effort to tag on to our bill any--. It would have been an effort without our bill, but there would be an easier and more difficult to defend effort to put on riders that would attack various Supreme Court decisions and even the jurisdiction of the Supreme Court itself endeavoring to limit its power to review state decisions and even to overturn juries and trial judges in certain areas.

B: Which at least partly is what happened. The bill that came out wasn't exactly your proposal.

C: No, it was quite away from it, even in the federal finance area. We got the state bloc grant which I think will prove to be a terrible inhibition to effectiveness. The states don't have the experience; they don't know how to distribute to the cities; there'll be delay; and there'll be jurisdictional disputes. I think it will be a real headache and seems to be proving so already.

B: The administration of the Law Enforcement Assistance Administration was changed too--the three man directorship?

C: Yes.

- B: Did you consider that a personal slap at yourself? Some so speculated at the time.
- C: Well, I didn't take it in a personal way, but I'd say unquestionably it arose from opposition to some of the things that I had hoped for and worked for. We felt that the three-man board was really unfortunate because--and a great shortcoming of criminal justice has been ineffectiveness. Julius Caesar knew that triumvirates were ineffective, and if our regulatory commissions hadn't shown us that they are ineffective, I don't know what would. You just can't arbitrate and compromise out executive programs and expect them to be effective; you've got to have decisiveness and drive. So, the original plan was to set it up in an independent administration. And this would really have been disastrous. The commission would have become the captive of its constituency like most commissions do.
- B: You mean Congress' original--
- C: Congress' original plan--Senator McClellan's really. The Congress wasn't, know, as a body cognizant of all this really. But it would have meant more of the same and it would have been, you know, just a pathetic operation. As it turned out, it didn't amount to much because the ultimate authority was really left in a much more centralized concept with substantial powers in the attorney general. And a division among the three administrators that really coincided with the division in functions that we saw it necessary anyway. I think in practice, certainly while we were there, even now from what I understand--I was talking with one of the members just yesterday at lunch. There's a single head that acts as an executive agency and not as some commission.

There were a number of really serious fights in the thing that reflected the underlying problems. One, we felt that police community relations was the most difficult and important police problem of our time. Everything that I see tells me that. There was a major effort by the hard-liners and by the southerners in combination to prevent the use of funds for police community relations programs, which has really been tragic. There was also a major effort by the hard-liners supported in large part by the southerners to prevent the use of any of these funds for police salary. Now, you can do whatever you want to, but until you improve police salaries you're not going to improve police performance because the salaries are pathetically low and you just can't attract and retain and develop and build competence without better salaries.

- B: Who were the most influential members of Congress among the hard-liners?
- C: I'd say Senator McClellan, Congressman Poff, men like Senator Hruska were not consistent hard-liners--they'd be hard in some areas, and, you know, quite good and effective in others, Senator Hruska being quite good in corrections, for instance. They were really not many numerically that were knowledgeable, but some like Senator McClellan were so terribly strategically located. He was chairman of the Subcommittee in Judiciary, the second ranking man on the Judiciary, had the complete support of the

chairman, Senator Eastland. He was also the chairman of our Appropriations Subcommittee so that literally on occasion we would adjourn a subcommittee meeting on the authorization before the substantive committee, and Senator McClellan wouldn't even get up out of his seat. We'd go into the Appropriations Committee where he'd take another whack at you, you know.

B: Did you get any help from President Johnson and the White House in this struggle in Congress?

C: He tried quite hard to help us with Senator McClellan and somewhat disastrously. I never knew exactly what happened, but I really think that Senator McClellan was so inflexible in his general attitudes that no meeting would have been meaningful or constructive. But somehow or other he came out of a meeting with the President, believing, or at least saying he believed, that the President had told him he could have any wiretap bill he wanted if we could have the federal financing bill that we wanted. It was immediately clear and had been before that that if he got the wiretapping bill he wanted we could have whatever we wanted on the finance side. But, you know, the President never made such an agreement and it left us in a position of some bitterness, because Senator McClellan was saying that he had been betrayed or tricked or something. I never really understood how it had happened, or whether it really happened, but he was quite consistent in his view that he had been promised any wiretap bill he wanted.

Actually, when you look at all of the elements we got, with some exceptions, most of what we wanted. The two worst defeats were the state bloc grant and finance, and we were able to compromise there and get some direct funding authority. That came to about fifteen percent as I recall, it may have been twenty percent, of the total funding in action programs. And, of course, the National Institutes for Criminal Justice was completely out from under the state bloc grants. So a major portion was out from under it, but unhappily in planning and direct action, we were caught under that. And then on the wiretap side, the authorization to state and local law enforcement was terribly broad and damaging, and will unquestionably, I think, result in a lot of frustrating litigation and reversal of cases because it's too undisciplined and uncontrolled.

On the other hand, we won basically on our financing bill. We got the funds we wanted, and we got the opportunity to administer them almost as we wanted to with the exception of bloc grants. We got the authority to support police community relations, and we got the authority to pay some salaries--increases in salaries. We got firearms control beyond where we had expected to get it.

B: The bill as it came out was more than you expected?

C: It was more than we had expected to get, and we even added to that later after Senator Kennedy's assassination. The Title II, which had been so controversial, which was the

add-ons to overrule Supreme Court decisions, was really not bona fide.

B: I'm not sure I understand.

C: Because--Well, it really was just window dressing for several reasons. First, it only applied to the federal government. The Supreme Court decisions that were under attack were not decisions that applied to the federal government. The federal government doesn't have five percent of the action in crime control. They apply to the state government. Miranda was an Arizona case; Escobedo was an Illinois case; Wade--the police lineup case was from the states' systems. So to apply these merely to the federal government was meaningless for two reasons. First, as long as we were in authority we stated we would not commit an unconstitutional act, whatever the Congress said. It was my judgment and remains my judgment that the Executive Branch, too, has constitutional obligations. It has an obligation not to violate the Constitution where there's a pretty clear standard set forth by the courts or by the Congress itself.

And second, you know, confessions aren't really an issue in federal enforcement. The FBI was giving a Miranda warning beginning in 1948. The Miranda decision didn't come down until 1966. The FBI did it because it thought it was good law enforcement to do it, not because the Supreme Court told it had to or because an attorney general told it it had to. You know, the FBI wasn't about to change; it didn't want to change. It decided twenty years earlier that the best way was the other way, so it really didn't have any meaning except psychologically. It looked repressive and looked like somebody was really trying to get tough.

B: And it is a campaign year.

C: And it was a campaign year, and that was a major part of it.

B: Incidentally, this is another tangent and probably an unethical question. Did you ever discuss with your father these decisions, some of which were done while he was on the Court?

C: No. My father went on the Court while I was in law school. Well, even before that, I can't remember us ever really discussing law or legal issues. I had joined the service when I was seventeen and from the time that I was twelve to the time I was seventeen, my father had become, you know, a fairly important person in the Department of Justice. He was head of the Criminal Division, the Anti-Trust Division, and the War Frauds unit during the war, and he just wasn't home very much. As a practical matter, he wasn't home at all hardly. So, then I was gone from the time I was seventeen. I was in the service, then in college, and then in law school. And then when I finished law school, for the next ten years from 1950 until 1960 I was in Dallas. I think we made it a fairly conscious effort during those years just not to discuss the work of the Court.

- B: I think we said a minute ago--all of this controversy over law enforcement becomes a part of the campaign that year in '68, and you personally became a part of the campaign by name. Most of this is on the record, but there's one question that arises here. As the campaign progressed, you were attacked by various candidates, particularly Mr. Nixon and Governor Wallace, and you began to reply to them very definitely and precisely. Did you have President Johnson's prior approval of that kind of thing?
- C: No. I don't remember the President ever referring to the campaign attacks, and I don't remember ever discussing my replies with him at all, or with Vice President Humphrey. I just thought it was necessary for me to state my view of the issues since I had been brought into the campaign. I think crime tends to be such an emotional issue that as a campaign issue, it's pretty harmful. And I really saw nothing constructive in the candidates' use of the issue. That it would be an issue had been clear to me for four years. It was pretty obviously clear to President Johnson, and I think unquestionably his crime message in February or March of '65 stemmed directly from his anticipation of this as a growing issue.
- B: Did that kind of thing affect morale in the Justice Department--the kind of vehement criticism that the department was getting?
- C: I don't think so. Historically an election year is a difficult year for executive departments, and perhaps more so for the Department of Justice than any other. One reason is that among your two thousand lawyers in the department, for instance, seven or eight hundred are in politically vulnerable positions. The assistant United States attorneys historically in an election year have a vast exodus. We didn't experience this at all; in fact, it was as far as I know unprecedented. The men that stayed on, and rather than the number of cases in convictions and trials declining drastically, they went up drastically. In a sense, perhaps, as is so frequently the case, the attacks on the department and on me tended to draw us together and cause a little more effort.
- B: I've left out an area here--this whole area of federal aid to local law enforcement which, as you've said, was the original purpose of the bill of '68. Am I correct that the book you're working on now covers your views generally in this area?
- C: I don't think it will cover the mechanics of federal aid particularly. I think it will cover the importance of the dominance of local law enforcement, which I think is critical to effectiveness, to public safety, and to liberty alike.
- B: Do you find local law enforcement ready to receive that kind of aid?
- C: There's a clear appreciation in local law enforcement of the inadequacy of the resources that they're provided. And they want more resources. This has been a major battle of theirs forever. You know, even if they'd had too much resources, it would probably be a

major effort of theirs to secure more resources. So, they're vitally aware of their needs for more resources. Most of them would like complete autonomy in determining the use to which those resources might be put.

B: That's kind of what I meant. Do you find that, well, for example, if you were to give a large amount of federal aid without strings to a local police force, would they be more inclined to take federal money and buy bigger and better radio systems, or put it into community relations projects and better training of policemen in sociology and so on?

C: Well, this varies very considerably with the police departments, but as the general proposition, in my judgment, the police have been so neglected that they have not developed the capability for making sound judgment. They don't have planning complements for the most part. And you can't perform a major bureaucratic function without intensive planning. They haven't had research units for the most part; and therefore it's the blind leading the blind. They don't have internally the capability of determining priorities.

B: Is there anything on this general subject of law enforcement that you think should be on this kind of record?

C: I haven't really thought back through it.

B: I'm kind of lost here, because it's still a continuing issue and you're still a young man who's going to be writing and working in this area for some time to come. So it's kind of up in the air in the nature of things.

C: Obviously, we're just beginning. I'm afraid the controversies as to how you control crime or prevent crime will rage for quite some time.

B: Do you think you made a difference during your tenure, in your public statements, and the actions of the Justice Department under your command?

C: Well, somebody else would have to judge that. I can't tell. The thing that I thought was that you can't force people to obey laws, that police can't really control society. I noticed the David Burnham article in the New York Times this morning in which he said it would cost twenty-five billion dollars to have one police officer per city block in New York City. This is, you know, impossible. He also pointed out, and this is a consensus of a conference they'd had in which Howard Leary, the commissioner of police, and others had been present. He also said that even if you spent twenty-five billion dollars and had one policeman per city block, of course, there are thousands of people that live in some of those city blocks--that your ability to control crime would be very limited because, of course, most crimes don't happen out on the streets. They happen in the elevators, as he pointed out, and in the homes in the kitchens, the apartments and flats and the tenements

and the alleyways, and all around.

Then too I thought that these were awfully emotional times; that there was no one under greater emotion than the police. That unless they were disciplined and even-handed and restrained, they were the best chance we had of irreconcilably dividing the country; that police lawlessness could just bring really savage outbursts. And therefore it was imperative that some leadership speak out and say that the police above all must obey the law; they above all must be professional and disciplined, because when they don't follow the law, there's no hope. This may have made a difference, I don't know. I think if all leadership took the position that you shoot looters and you take a tough line that far from controlling human conduct, we would stimulate vast violence far exceeding anything we've seen yet.

- B: That may answer the next question. One comment that was made by persons sympathetic to your stand was that your point of view should have been heard, but not necessarily from the Office of the Attorney General.
- C: I think a lot of people think that, and there's no question but that many were both outraged and enraged that I would take that point of view publicly. You know, you reach your own judgments, and my judgment on the issue is very clear. When I see massacres like Orangeburg, South Carolina; when I see the stupid violence of police at the Chicago national convention and here at Berkeley just recently, I realized that they have to be told from some high source in power that they will be held responsible for their acts. If they don't believe they have any responsibility for their acts, their own officers won't be able to control them. Again, in the New York Times this morning, there was quite a writeup about Columbia University in which it's pointed out, as we've seen place after place, that field police commanders have completely lost control of their troops, of their policemen. The guys just couldn't be controlled. And the reason is that no one from above has said, "You've got to obey the law."

I think, if there's anything we saw in the directions that we had, it was that we had to have a lot of men here in Washington in the march on the Pentagon and during the whole Resurrection City thing, during the inauguration ceremonies, that would just police the police. And many a time a really effective police leader like Jerry Wilson would go up right into the line and just put his arms around a policeman and pin the policeman's arms to him and just pull him back, because he had just gone wild, and he was going to shoot somebody or bash their heads in. Well, you just have to do that a few times, and you're off to the races.

The thing about tough talk to me is if someone talks tough to me, I can't help it. I get angry. And I assume other people do the same. If you're making people angry, you're not going to communicate; you're not going to unite; you're going to divide. When an attorney general talks tough to college students, he has destroyed his chance to reason

with them. They are turned off. And if you can't reason with them, what are you going to do? You've lost your one real chance.

B: Did you ever ask President Johnson to speak more often and more firmly along these lines as an even higher voice of authority?

C: Well, I think he knows how I felt. I don't believe he felt the same way too much. I think here is where a difference in age makes a tremendous difference. It really does. And our views on Resurrection City were, you know, quite different.

B: In what way?

C: Resurrection City appalled him. He loves Washington. It represents everything good that he believes in, you know--physical beauty, grace in government, heroic monuments, human dignity. To see these pitiful poor people with their psychotics and their ugliness and misery sprawled on the monument grounds really hurt him--deeply hurt him. I think he was quite courageous in controlling himself and in letting us proceed as we did. But you can't avoid the truth. And the truth is that we have psychotics, and we have poor people. It's awfully ugly, and you just can't hope to confine them in the ghettos and never think about them. And what the American people really said was, "We don't want to see it. We don't want to know about it. If it has got to exist, keep it out of our sight. Keep it off the monument grounds."

We heard these people, and we had them here for a long time and unquestionably in terms of politics, it hurt. There was never any doubt in anybody's mind about that. The question is whether you were willing to ride the other wave, and I for one would never be willing to ride the other wave. It's much too costly. The fact is that seventy-five percent of our people are so comfortable and so affluent that they will strike back in anger at anything that threatens their mere well-being. And we've got millions of people who are terribly frustrated and anxious, and repression will, you know, really blow this place up, I'm afraid. So, I think it's imperative for leadership to try to reach across and communicate. The attorney general can very easily just talk to the people who are not involved, the seventy-five percent that are at home and comfortable and buying a pistol or something to protect themselves, when they don't need it. They're liable to shoot themselves in the foot or elsewhere. But if he does that, what's he accomplishing? They're the last people in the world that need to be talked to. You know, you're just talking to people who are already so unwilling to help, so unconcerned about justice, that you just further divide.

B: Sir, I'm off now into other items with no special coherence or order to them. One thing that I think ought to be asked because it has come up since we talked about it--in reference to Justice Fortas. When his nomination for chief justice was being considered, was the Wolfson matter known about at that time?

- C: No. You know, I don't know what the President knew, but I'm sure he couldn't have known.
- B: Is it not a procedure, when a man is being considered for nomination as justice, or in that case promotion to chief justice, to ask them if there's anything that could come up in Congress?
- C: I don't think we ever did. You know, it would be kind of embarrassing, for one thing. It has an insinuation about it. You, of course, have an FBI report. Here's a man who had been confirmed in 1965 by the Senate to be an associate justice. Actually, I've had the theory and felt it quite strongly that you don't run a new FBI investigation on a sitting judge; that there's a presumption because of the public exposure that he has that his conduct has been good. But in addition, there's a danger to investigation. If you begin executive investigations of high judicial figures, where then is your separation of powers and your balance? To go to an associate justice, or even to go to a district judge, which I would never let us do--it had been done some in the past, and say, "Okay, now, are you an honorable man? Have you done anything dishonest? Have you taken bribes, or have you done things foolish?" Just can't be done. The American University thing was a complete surprise to all of us, and I'm sure to the President. I can remember that that was a surprise to him. Of course, the Wolfson thing came up after January even.
- B: The American University thing was the fees for the lectures?
- C: Yes. None of us had heard of that. We were, you know, kind of disappointed about it, to say the least. The Wolfson thing was a complete surprise. I first heard about it actually on the ninth of November. I had to look this up to see when it was. That was the eighth and ninth--. Late on Friday evening of the eighth I had a call from New York that said Life magazine was about to run this story. This was the Friday after the election. Of course, Life magazine didn't run the story at that time--it was early May before it ran it.
- B: Why didn't they run it then?
- C: I don't know. My guess is that the story was dead then, and that it was rejuvenated with the facts that may have been supplied by the Department of Justice in the spring of 1969.
- B: Did you notify Mr. Johnson when you heard about Life magazine's plans?
- C: No, I didn't. I called him when the Fortas controversy broke out in the Life story in early May. I was in California. I got back on Monday, the twelfth of May. And I called President Johnson that day. I told him that I had heard about the story on November ninth, and he asked me why I hadn't told him. I just don't know why I didn't tell him. I couldn't quite recreate it in my own mind. I know that I immediately asked Justice Fortas about it. I went to his house that Saturday, and he said . . . He called. He has got a

secretary who keeps all of his books and records and everything. And while I was in the room and she looked through the records, he said, "Well, I paid that money back. I decided that I couldn't do it." Well, it seemed to me that it was another American University thing, from everything I had heard or seen or even know now. It was, you know, just one of these things where he was going to get money for research and lecturing in areas that were very important to him. You can say what you want to, he was very concerned about civil rights, and had worked hard in the area and done a lot of good. I guess he just didn't want to be out of it.

Well, I waited for Life magazine the next week, and there was nothing there. And I waited for Life magazine the following week, and there was nothing there. And I had really just about forgotten about it until the Friday night before I went to California in the latter part of April or first of May--I can't remember when, of '69, when I had another call from New York that said,, "You remember that story?" And I said, "Yes." And they said, "Well, it's going to run."

B: Were these calls from Life magazine?

C: No, these calls were from Department of Justice personnel in New York who had been inquired of by Life magazine, and who knew about it.

B: Another matter, sir. As a Cabinet officer, did you ever participate in advice on Viet--

C: Very little. I can't quite remember when it was. Harry McPherson would know, and Clark Clifford, but it was in February perhaps of '68. The President decided, as he would from time to time on various things, that he wanted me to consider some of the Vietnam problems. The immediate problem at this time was the bombing of North Vietnam. I went over to the White House and had a lengthy session with Clark Clifford, Walt Rostow, and Harry McPherson. Then a few days later, the President had a meeting that really adjourned over to the dining room in the Mansion at which, I'd say, sixteen people perhaps were present. Dean Rusk, Clark Clifford, Rostow. And then he had called in some outside people who had been earlier advisors. Mac Bundy was there, Bill Bundy was there too. I had stated my views in the smaller group, and I stated my views to the President. I didn't say anything at that meeting. In fact, he said he was going to talk to me later about it, and so I didn't say anything at that meeting.

B: What were your views?

C: My views were that we ought to stop the bombing--this was the issue--of North Vietnam altogether. In fact, that we ought to stop the bombing except where it was in the direct military engagement in a combat zone in South Vietnam, and where it could be done without civilian involvement.

Then I was left out for several weeks. I was dropped from that; I just wasn't included in it again. But the compromise by bringing the bombing below a meridian was brought in in the last meeting that I was in. I can't remember--was it the 21st parallel, 19th parallel, whatever it is, that left about seventy percent of the land and ninety percent of the population, including of course Hanoi and Haiphong and those places, free of the bombing and just gave you this strip of kind of the panhandle of southern North Vietnam, just north of the demilitarized zone. The theory being that you could bomb troop convoys and infiltrations through the demilitarized zone down there. And that's about all.

B: Did you ever discuss with Mr. Johnson legal things pertaining to the Vietnam war? For example, were wage and price controls ever seriously considered?

C: Yes. You know, from time to time that would come up. You know, you can't help but inject yourself into policy matters where I was quite strongly opposed. The major consideration that kept arising is whether the President had the power to put price and wage controls on under a 1914 act, the name escapes me right now--it's a well-known act, but I just can't. I felt very strongly that he didn't really have the power and should not try to exercise it; that it would just look so arbitrary and so excessive that if the economic judgment was that price and wage controls--. Trading with the Enemy Act is the legislation, Section 5 of the Trading with the Enemy Act. And that if you wanted to do that, you'd just have to present it to the Congress and get a clear-cut new political policy decision and guidance on it. The thing that the economists feared was what would happen between the date that you proposed price and wage controls and the date that they were effective. And no device for a freeze in that period had theretofore ever really worked, and they thought that great harm would be done to the economy during that period. If you could rely on some existing authority like the Trading with the Enemy Act, you could avoid that.

B: How about prosecution of dissenters? Did Mr. Johnson want a tougher line than you were following?

C: It's hard to remember how very emotional we were about Stokely Carmichael and some of those. I think he was outraged by Carmichael, and he's not a lawyer. You know, I think he thought it would be very good for the country if we could stop that. My position was just a legal position. We didn't have the facts that as applied to the law demonstrate guilt of any crime. And without that, I just think if you're going to be a system of law, there's nothing you can do. I further did not think that we should propose laws, because I think the notion that you can control dissent by convicting a few of the most outspoken radicals is, you know, absurdly naive. If there's nothing to it but the charisma of a few leaders fanning flames, why, it's not a very serious problem. The fact is that they're nothing but the most extreme manifestations of a very great unrest and turbulence, and that a repressiveness of them tends to bring the general level to a boiling point. So I would say that President Johnson's tolerance of our enforcement policies was very remarkable. I'm

not sure that we find anything in recent history that would show a greater adherence to ordered liberty or to our principles, because it would have been very easy to strike out at Carmichael without a case, you know. And it's quite a tribute to the country perhaps that it would adhere to its principles of laws as it did, and to President Johnson. He was the man that really was under the pressure.

B: Why then prosecute Spock and Coffin et al?

C: The reason was because when we put the facts against the law, our judgment was that they'd violated the law. I think the system has to have integrity. If you don't prosecute violations of the law, you don't have a government of laws. On the one hand, in my judgment, if we had prosecuted Carmichael without facts, we would be guilty of, you know, most serious abuse. But if we didn't prosecute Spock and Coffin where we did have the facts of violation in our judgment--this is a matter of judgment--we would be guilty of just the opposite abuse. It's not a question of morality--who's right. Is Spock right, or is Johnson right? It's a question of whether the system has integrity. And if the law says that you cannot do this and you do it, then you've got an obligation to enforce the law.

The difficulty in the Spock and Coffin cases, and cases like that is--You know, in this seething milieu of thousands of people, how do you determine equal justice among all of them? Our theory was that mere violence was a local offense, so that when there were violent riots directed towards selective service centers in Oakland and in New York, these were offenses in New York. Now, if it had been the Red Cross or the Chase Manhattan Bank or something else, the mere fact that it happened to be federal property wouldn't make it a federal offense. They never destroyed federal property. Local law enforcement has a responsibility to protect federal personnel as much as private personnel, or state or local personnel people. And these were local laws.

But we thought, and I don't think it could really be denied--they've never denied it to me--that people decided to destroy the Selective Service Act by causing through their acts thousands of people to refuse to serve. Well, there's no state or local law that can protect the Selective Service Act from that. The power of government to raise armies is unquestioned. It has to be unquestioned. But the power to frustrate the ability of the government exists too. And these men endeavored and said they endeavored--and said in front of the Department of Justice although this isn't a factor--that they said it. It just shows what they manifested at the time, that they were deliberately endeavoring to destroy the Selective Service System. Well, if it had been the Agricultural Extension System or the United States States Attorney System or the Poverty Program, or something like that--. They weren't doing it by violence; they were doing it by, you know, something analogous to a boycott really. "I won't serve. I won't go."

If all the young men who were subject to the authority of the Selective Service

System said they wouldn't go, the act would be destroyed. Therefore, we brought these cases. They were brought at what I have thought to be the height of the anti-Vietnam emotion. I'm pretty sure it reached the fever pitch in the fall of '67. It was still high through Christmas of '67, but in '68 even before the President's withdrawal on March 31st, the people began to mark time a little bit, thinking, "Well, here's an election year, and we'll see how this issue shapes up."

B: Sir, if you have time, I have one more question. I'd better preface this by saying that this is based on pure supposition and guess on my part with minimal evidence. Was Lyndon Johnson very angry at you toward the very last days of the administration?

C: I think he was. I didn't realize it at the time, but I learned later that he was.

B: Was it based on just general things, or was it based specifically on filing of the IBM and General Motors suits?

C: I think those would only be a small part of it. I think it was a whole bunch of things. These were difficult times, and we'd had the background of Carmichael and Resurrection City and the fall campaign in which most of the politicians thought that the thing to do was talk tough. Then there were several things like we named a federal youth center for Bob Kennedy, which I thought was an awfully important thing to do. He had been attorney general, had been very devoted to young people and to corrections, and then we dedicated a monument to him and the Department of Justice bust in the courtyard.

B: In the last days of his administration, that kind of thing could still get Mr. Johnson angry?

C: Well, I don't know. I'd say that they perhaps raised some questions with him. There were a number of lawsuits we filed. He felt very strongly that you shouldn't do anything that was dramatically out of line with your ongoing programs that would impose burdens on a new administration. There were a number of lawsuits were filed that didn't look right. One was the IBM case. The fact is that we had been studying the IBM matter for three-and-a-half years, and it was a terribly important matter. In my judgment, it would just be a default of duty to abandon a three-and-a-half year study or turn it over with the heart cut out because the six or eight people who were most critically involved were all leaving the department without a decision.

There was a big oil merger, Atlantic Refinery and somebody else. [Richfield] Well, you know, if you don't sue when a merger takes place, you've lost your chance. We didn't ask them to merge. They decided to merge and when they did, we sued. We also blocked a merger between Music Corporation of America and Westinghouse. One thing you forget is that there are a lot of people who try to do things that they've been wanting to do for a long time at a time when they think they can get away with it, and that time frequently is between November and January in a presidential election year. Because they

figure that an outgoing administration might not care, might be inclined to be easy. And we weren't.

B: I asked the question really because I noticed that you weren't at the last luncheon on inaugural day.

C: That's right. And I--even at the time I didn't know anything about it. I mean, I knew there was a luncheon, but it just didn't occur to me that there were some that were invited and some that weren't. It turned out that there were a few of us that weren't invited.

B: Finally, and maybe it's an appropriate time to move into that, would you care to assay an evaluation Mr. Johnson as president, or is that too tall an order?

C: Well, I can just make a few observations. I think he may have been the greatest force that ever occupied the office. His force was not always too well directed, but perhaps more for the combination of problems that matured during his time than any other reason. As far as I can see, he is the first president to be consumed with a desire and to communicate his consumption with the desire to eliminate poverty. Now, this was a matter of real vision, because he was far from the first, but he was the first major political leader to come out strongly and clearly for the elimination of poverty, which I think many can now see is essential in urban mass society. You can't tolerate poverty anymore. To have poverty in our time is to breed crime and to breed turbulence and to breed riots.

His effectiveness in government, I think, will stand--in the domestic area will stand any test. It's hard to remember that our expenditures at the federal level for education were only three billion dollars a year when he came in in '64, and had risen four-fold to twelve billion in four years. This and health--and I think education was his real love--I think he sees that as the salvation of mankind. In health, he more than quadrupled federal expenditures--from three to fourteen billion dollars. This will just make an immense difference, you know. We may have a cure for cancer ten years earlier than we would have had otherwise, and things like that. How many lives and how much human suffering will be saved because of it? In employment, in 1964 there were seventy-five thousand a year receiving the benefits of federal manpower development training programs--seventy-five thousand. In 1968 over a million. There just never has really been anything like that. Except for Vietnam, Heaven only knows what would have happened.

B: How about weaknesses in the man?

C: Well, I guess in great men, both strengths and weaknesses are exaggerated. He had a secretiveness about him that gave an appearance of disingenuousness that was not really true, I don't think, and unfortunate. And in terms of personality, he has some qualities that made it difficult for him to inspire people that he needed to inspire to bring forth their best effort. He didn't always attract the strongest and best people and give them full support.

That's what you have to do in a major operation of any kind.

B: Are you speaking of the cabinet or White House staff level?

C: Both. And sub-Cabinet too. His decisions in those areas would tend to be very narrow from personal experience and contact and loyalty and trust. He didn't take many gambles in appointments like that. You can hardly imagine him reaching out and appointing a Rusk or a McNamara whom he had never met as President Kennedy did. And then his difficulties with the intellectual community, at a time when its involvement was so important, hurt.

B: Anything else, sir, that you would like to say?

C: No.

B: I've taken a great deal of your time. I thank you for it.

C: Thank you.

[End of Tape 1 of 1 and Interview V]