



EDWARD M. KENNEDY ORAL HISTORY PROJECT

INTERVIEW WITH EDWARD M. KENNEDY

Interview 11

May 8, 2006
Washington, D.C.

Interviewer
James Sterling Young

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TRANSCRIPT

INTERVIEW EDWARD MOORE KENNEDY

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Young: We want to review the background of the relations between you and [Richard M.] Nixon and the Nixon administration, and the politics up to that time. Jim [Flug] has a little background on that, and I thought it might be useful to say where things stood *vis-à-vis* the Nixon White House and Nixon when all the stuff started in the Presidential election year of '72. There was a bit of history between the Kennedys and the Nixons.

Kennedy: Yes. I'll have to find out about the intersections during that time, what we were working on after he was elected in '68, through '69, '70, and '71. I don't have the background on what we were doing legislatively.

Young: Jim mentioned a few things. Maybe this is enough for you to comment on. You were going after Nixon on a number of issues: warrant-less wiretaps for national security, the handling of the anti-war demonstrations, the [Clement] Haynsworth and [G. Harrold] Carswell defeats, and your opposition to [William H.] Rehnquist. Then Nixon gave you Secret Service protection—which you apparently didn't want, or rejected or declined after a while. Is there any background here that's a preface that you might want to talk about?

Kennedy: In 1966/'67 and on into 1968, the war was the overarching issue. He had gotten elected with a "secret plan," but of course he didn't have a secret plan, and the war continued. I know that was a fact and a force during that time. And then we had very extensive discussions on Carswell and Haynsworth. I don't know whether we want to cover those later. I think I have referenced how Haynsworth had been on our moot court bench down at the Virginia Law School and had voted with Senator [John V.] Tunney and me, and how we ended up in opposition to his federal nomination.

Carswell was just a poor excuse for a nominee and had trouble all the way through. We had also Rehnquist about this time. I'm not sure what year it was, around '71. We ought to get into that fight. We had eyewitnesses in Arizona who said he went to polling places with a copy of the Constitution where Hispanics and other minorities were lining up, and asked them to read the Constitution to keep them from participating in the vote. The witnesses saw them leaving the lines. I led the fight against him then and later on for Chief Justice. We had 31 or 33 votes.

The points that you raise with regard to the war: the issue was going and going and the anti-war movement—demonstrations and parades—was intensifying. We had the Nixon administration's

Cointel Program of wiretapping and domestic spying, putting prominent journalists on the “enemies list” as well as prominent members of the entertainment business and prominent civilians who had been involved in the anti-war protests. There was information leaking out about this. This became a big issue, and during the Cointel Program there was evidence that domestic spying was taking place.

We were able to have hearings in a specially constructed committee, primarily Judiciary Committee members. I think we had Judiciary, the Foreign Relations Committee, and maybe an Armed Services Committee that had developed legislation to deal with the unwarranted spying. There was an old trick. When [J. Edgar] Hoover would come up, they’d ask him how many wiretaps were going on, and he’d say maybe 50 or 75. Well, there would be 50 or 75 *that day* because he’d take all the other wiretaps off the day he was going to testify and put them all back on the day after. We can get back into that in greater detail. It’s worthwhile.

We had also been involved in the demonstrations that were taking place. We actually worked with the Justice Department to ensure that these demonstrations were going to be orderly and non-violent. There were monitors in the demonstrations to make sure they were going to be peaceful and that rights were going to be respected. All those things were going on.

Young: Would you say there was a lot of friction—or more than the ordinary friction—between you and the Nixon administration before these events occurred in ’72?

Kennedy: I had had a halfway decent relationship with Nixon, going back to the time my brother came to the Senate, when he had been pleasant to me. One time I had taken the train down from Boston, and he was going into the Vice President’s office and invited me in and spent 45 minutes with me. In personal terms, he was very tough behind my back, encouraging dirty tricks and other kinds of activities, but whenever we were face to face, he was always gracious. But we had a lot of tension with the administration and the Justice Department during this period because of the nominees coming up and because of the Vietnam War—which continued to be a major conflict—and a lot of attendant policy decisions related to the war: the wiretapping and policing of demonstrators.

So that’s the climate and the atmosphere that led us into this period. In ’70-’71 there were the actions by what they called the “plumbers” that burglarized the psychiatrist’s office for the files of [Daniel] Ellsberg, who had leaked the Pentagon Papers in September of ’71. And then we had the series of events that started with the break-in at the Democratic National Committee at the Watergate in June of ’72.

Young: We can move to Watergate, if you like, in ’72, starting with the [Richard] Kleindienst hearings. It’s interesting that Kleindienst was confirmed five days before the Watergate break-in. We know that in retrospect. The arrest was on June 17, after the extensive hearings in the Judiciary Committee about Kleindienst’s confirmation. He was confirmed over your opposition on June 12. Perhaps one of the important historical contexts here is that all of these things are beginning to break in a Presidential election year and in the run-up to the conventions. That’s when the spying, the dirty tricks, and everything seem to start.

Kennedy: What we had is these four rather dramatic events that started in '71 and were all related. There was the ITT [International Telephone and Telegraph] scandal and how that related to Watergate. It was the same players, the same atmosphere, the same activities directed towards ITT, and then eventually Watergate. And then the [Gerald R.] Ford ascendancy when the whole issue of Watergate was evolving and developing. The independent prosecutor and the collapse of the Nixon administration—they were all interrelated: the series of events that led to the impeachment were ITT, Watergate, Ford coming in as the Vice President, and the impeachment itself. We became very much involved by an odd set of circumstances that put us up to our ears in the whole issue of impeachment. We can roll through that if you like.

Young: That's good. Jim Flug makes a big point of the Kleindienst affair being the beginning of this whole extensive effort in connection with the reelection of the President and surveillance of Democratic potentials. It seems you were in the lead in uncovering it at the very outset. You smelled a rat during the Kleindienst confirmation hearings, which were very extensive. When he was finally voted in, that's where Dita Beard came in.

Kennedy: When ITT was being investigated for antitrust violations, suddenly the case was being closed down, and there emerged a \$400,000 contribution to the Republican National Committee for the convention. Larry O'Brien mentioned this, and it stirred up a bit of a flap—not an enormous flap, but a bit of a flap. He gets into this in his tapes. (I haven't listened to the tapes, but maybe someone has.) Larry believed that the reason they began to bug his office in the Watergate was to get more information about how much he and the Democrats knew about what the administration had done with ITT and the \$400,000. The burglars put in various kinds of equipment, and then a week later went in to try to fix it up and got arrested. This was at about the time when the Kleindienst hearings were going on, and as a result of the news story about the \$400,000—

Young: Jack Anderson?

Kennedy: No. The original \$400,000 story was before Jack Anderson during the first Kleindienst hearings. Later I asked him whether he had ever talked to the White House, and Kleindienst denied it, denied it several times, vigorously. And, as we all know now, that was a blatant, flagrant lie. So he went on through the Judiciary Committee hearings and was approved. When Jack Anderson's story came out that said that effectively a deal had been made by the White House and the Justice Department to drop the case against ITT and correspondingly get the money. Kleindienst insisted that we go back to the Judiciary Committee and review that. So we came back and did the oversight hearings, a very long and extensive set of hearings—22 days.

Young: You were chair of the Administrative Practices Subcommittee?

Kennedy: Yes. [James O.] Eastland let us go ahead and investigate Watergate in that Subcommittee, which we thought was rather decent, but we later learned that he had been in touch with the White House, and the White House thought it was better to keep it there with our Administrative Practices Committee than to have it go to the Judiciary Committee.

Young: Could you talk about that? Because that's not apparent.

Kennedy: Well, I think based upon the White House tapes (I haven't heard them; this is just what we have found subsequently), they were letting us do it rather than have it go to the full Judiciary Committee. They'd rather have the Administrative Practices Committee—less focus, less attention—than have it all move along to the full Judiciary Committee.

As for the Kleindienst inquiry, at the end of the hearings, we ended up with three or four votes. Tunney, [Quentin] Burdick, [Birch] Bayh, and I voted against Kleindienst. But even Phil Hart, who was a fellow of great, great integrity, voted in favor of him. We had a whole series of hearings on that, and part of those hearings dealt with a lobbyist called Dita Beard who wrote the memorandum that outlined the [ITT] deal, so to speak.

We went out to Denver, Colorado, to meet with Dita Beard. She evidently had been sick. But before we interviewed her, [E. Howard] Hunt—who had been very much involved in the Watergate break-in, working with those who broke in—reappeared and went to Denver with a red wig (people later said it wasn't very good) and debriefed Dita Beard.

Young: Went out to Denver?

Kennedy: Yes.

Young: He had a voice alteration device, too.

Kennedy: So he debriefed her. We arrived out there, several members of our committee and I (Senator Hart was the chair)—with my Ad-Prac Committee counsel and Eastland's Judiciary Committee counsel. Senator [Edward J.] Gurney questioned her. He asked, "What did you know about Kleindienst?" And at that time, her blood pressure went up, the arrows of all the machines went to high gear, and she gasped and gasped and every other thing she could do, and the doctor stopped the interview. That ended it. Phil Hart said he was not going to interview her again. He was scared to death that she would collapse or die or whatever.

Young: Was her performance credible? Was she really in pain, do you think?

Kennedy: I think she knew an awful lot and she had been told not to talk, and she wasn't feeling great. There was the question about the legal standing of the doctor. He had conflicts of interest: he was being investigated for Medicare fraud. So that was part of the whole process. But there's no question that she knew an awful lot, and when she was asked to talk about it she was unwilling to do so.

Of course, we find out now—and it's well worth it to review exactly what had been going on between Nixon and Kleindienst, which came out in the Nixon tapes.

Young: It's on page five. That's about as direct—

Kennedy: These are well worth going through. This is on one of the tapes, we found out subsequently. Nixon had evidently asked [John] Ehrlichman to call Kleindienst to stop the pursuit of the appeal on ITT [*reading*] as requested by "top officials of ITT including CEO Harold Geneen."

When Ehrlichman telephoned Kleindienst with directions to drop the case, Kleindienst evidently demurred and pleaded that it was too late: [Richard W.] McLaren had already filed the appeal (he was head of the antitrust division). Ehrlichman stormed directly to the White House, where Nixon was meeting with George Shultz, and Nixon telephoned Kleindienst. His message, as shown in the excerpt from the Nixon tapes, was clear [*reading*]:

“Nixon: ‘I want something clearly understood, and if it’s not understood, McLaren’s ass is to be out within the hour. The ITT thing, stay the hell out of it. Is that clear? That’s an order.’”

“Kleindienst: ‘You mean the order is to—?’”

“Nixon: ‘The order is to leave the god-damned thing alone. I’ve said this, Dick, a number of times, and you fellows apparently don’t get the message over there. I do not want McLaren to run around prosecuting people, raising hell about conglomerates, stirring things up at this point. You keep the hell out of that, is that clear?’”

“Kleindienst: ‘Well, Mr. President—’”

“Nixon: ‘Or either he resigns. I’d rather have him out anyway. I don’t like the son of a bitch.’”

“Kleindienst: ‘That brief has to be filed tomorrow.’”

“Nixon: ‘That’s right. Don’t file the brief.’”

“Kleindienst: ‘You order it not to be filed?’”

“Nixon: ‘My order is to drop the god-damned thing, is that clear?’”

“Kleindienst: ‘Yes, I understand that.’”

That showed that Kleindienst had clearly talked with Nixon. So we have the situation now where—

Young: Can I interrupt for just a minute? Of course, those White House tapes that you just read were not known at the time. It was not known that clearly, at least, that Nixon had himself been personally involved in this. Did you suspect that was the case earlier, that Nixon personally was involved?

Kennedy: I certainly suspected it. I knew someone high up was very much involved. It just rang that way, closing down a major antitrust suit, the visibility of ITT, a major conglomerate, and the tie-in with the \$400,000. You think, *Well, maybe that’s coincidental; these large corporations make large contributions anyway.*

But it was such a dramatic closedown, after they had been working so hard on it, that it was clear it was coming from someplace. I don’t think we could possibly have imagined that Nixon himself had been involved in it. This fellow Peter Flanigan, who was in the White House, had very strong ties to Wall Street. You could always see Peter Flanigan saying, “Look, we have the

Justice Department running amok; can I get that straightened out?” and the President saying, “Fine,” without getting into the details.

You wonder whether the President really got that involved. All they have to do is wink and nod and blink, and they have these things done. But to have him that personally involved and knowing about conglomerates and about McLaren and about this case is startling to me—and for him to be permitting the White House to make these kinds of calls.

Young: When he was solicitor general, Erwin Griswold subsequently testified before your committee on this matter, didn’t he? He confirmed some of this as well.

Kennedy: It was unusual that he would be involved in this. But you have the same people here now: Ehrlichman, [H.R.] Haldeman, Hunt, and Nixon, all tied in with this ITT thing, all lying about it. This is the beginning of Watergate, because I think it holds up pretty well that the reasons for the spying in the Watergate dealt with what O’Brien knew, and the allegations and charges that were beginning to bubble up about ITT contributing the money and getting a fix over at the Justice Department.

They wanted to know what Larry really knew about this thing, and they got themselves in it, and you have the same people involved in it with a series of lies, including Kleindienst and the White House, clearly. They just continued that pattern all the way through to the time of the impeachment. This was really the beginning of the impeachment process. It started with this whole development and investigation and the coincidence of the Kleindienst hearings.

Young: At the beginning, “impeachment” was not in the vocabulary. That came later; it was the scandal and cover-up.

Kennedy: This is where we are at this time. We come back from the Midwest, Denver, and the next question is, “What are we going to do about all of this?” The whole thing is getting hotter and hotter, and [Wright] Patman, who headed the House Banking Committee, tried to get subpoenas. Patman couldn’t get any Republicans. Ford was down there working the Democrats, and six Democrats went against getting any subpoenas into this whole investigation. They were effectively paralyzed.

So when the House was paralyzed, I went to [Samuel] Ervin—he was the chairman of the Constitutional Rights Subcommittee—and said that he ought to go ahead and investigate it. And Ervin writes to me that he thinks our committee ought to go ahead. We have a letter to that effect.

Young: That would have been in October?

Kennedy: In October. He told me to go ahead. He said that we’d done work on this, and that we ought to continue to do the work on it.

Young: So the whole investigative lead, then, the House being shut out—

Kennedy: —shut out. It was really left to us for a period of weeks and months.

Young: This was with Eastland's blessing?

Kennedy: This was with Eastland's blessing—most importantly, Ervin's blessing. And I had let [Michael] Mansfield know, and Mansfield's understanding and Mansfield's work on this. So we continue. I write the members of my committee and say that I've talked to Mansfield, I've talked to Ervin. Ervin suggests we go ahead, and we're going to issue subpoenas for phone records in advance of bank records. Then I sent people out to California to inquire and investigate this fellow [Herbert] Kalmbach, who was the bagman for Nixon and had been raising money for the Republican National Committee and for Republicans generally.

Young: Was ITT still the center of the picture at this point, or was it getting beyond that?

Kennedy: I think ITT was still in the picture and—at least from our point of view—it was beginning to look like there were a lot of common strains between the money people and the people who had been involved in the break-in at the Watergate. There was a \$25,000 check from Kalmbach to one of the burglars, and Kalmbach had been handling money for the Republican National Committee. So this was beginning to have some interesting tie-ins with who was doing what and why they were doing it. It had not been directly tied in to the White House, particularly, but had been tied to Republican operatives with close White House ties. I think that was about as far as we could go at that time.

When Jim Flug and other staff members go out to California, Kalmbach says he won't talk. He's going to have to be subpoenaed to talk. In the meanwhile, the McGovern Presidential campaign is on. George McGovern, [Frank] Mankiewicz, [Edward] Bennett Williams are all going sort of crazy—it's before the November election, and they want us to do a full-scale investigation and pull all of this together to publicly carve up Nixon on all this. There were stories: Stewart Alsop had a long story in *Newsweek* saying, "This is the moment of decision for Kennedy. What's he going to do?" Were we going to do what we should do—the investigation—or were we not going to do it?

Young: It was sort of "damned if you do and damned if you don't." If you do it—[Robert Sargent] Sarge Shriver is the Vice Presidential candidate—it's going to look like you're doing this as part of an election strategy. But if you don't do it—

Kennedy: —we've missed an opportunity to catch people violating the laws of the country. But we clearly did not have enough at this time to do the kind of hearing that was called for. We didn't have enough information or time to do a full-scale hearing, to do it right and do it well and do it effectively. Looking at it from McGovern's point of view—because I had such high visibility—it still seemed that the best we could do was have someone else do it.

It would be best if we could get a hearing under way, but it ought to be chaired by [John R.] McClellan, who had investigated the rackets years before—or by Ervin. And then a full hearing would make a lot of sense. We were eventually able to get it worked out with Mansfield to designate Ervin.

Young: What was his view of who should do it and when and what?

Kennedy: Well, Ervin wanted us to do it because he thought we had done the most work on it, and he and I had gotten along well. He thought it was just a natural thing for me to do it. I knew it didn't make sense because of the visibility. It wouldn't be so much about Nixon as about me and Nixon. It would all be political without getting to the substance of it. That was self-evident to me at that point. So the question was whether it was going to be McClellan or Ervin. We kept it moving along in November and December through the election, but we couldn't get this issue worked out. Mansfield finally got Ervin to be willing to take it on.

Now, it was enormously important for Ervin what his mandate and his resolution were going to be and the makeup of that committee. The Republicans wanted an even 3-3, but that didn't seem to make a lot of sense. So we were very much involved in that judgment decision to make sure that Ervin had the majority. And secondly, the mandate on the resolution itself: what was he going to be entitled to get into, what was he not entitled to? What were his powers going to be, what was his reach going to be, what was the extent of his power going to be?

We worked very hard on that resolution, worked with Ervin on the floor on it. If you look back in terms of the debates and discussions, you'll see his answers to the questions we were asking. Even some of those answers were not as expansive as they could have been, as we had hoped. But they were solid and they were good, and he made a very strong record about the scope of the resolution and the makeup of that committee, which was enormously important. The Republicans wanted a weak resolution, a weak committee, and if that had been the case, I think we would have had a different outcome.

Young: So this issue was being worked out and finally resulted in a satisfactory mandate—at least from your point of view, and to the Ervin committee—or was it not satisfactory? Would you have liked to see a stronger committee?

Kennedy: Well, it seemed to me it was satisfactory. I thought we could have had it stronger. We outlined the extent of it in some questions and answers, but if you look back now historically, it was able to do the trick. It exposed the tapes. People who came up there and testified talked about what was going on, and Ervin was able to begin the unraveling of the White House. But at the time, given the history of the White House as we had seen with the ITT—sending Hunt out there with a wig, and muzzling Dita Beard, and direct lying by Kleindienst about his relationship with the White House—the extent and willingness to lie and mislead on these issues was virtually unlimited.

And what was beginning to be at stake was the whole administration. So it was becoming more and more important in terms of the reach of this investigation, with greater and greater significance. And it was certainly apparent to me that it was going to be tougher and tougher to get to the bottom of it.

Young: Do you remember the politics at work in getting the mandate and getting the select committee rolling? Where was the White House in all of this? Later it turns out that [John] Dean is telling President Nixon that Ervin is your puppet, and this is a puppet show being orchestrated by you, but you retain a strong role. But surely there was a lot of politics involved. How was the White House working to influence this?

Kennedy: Well, the White House knew that we were the ones who had done the preliminary investigations, and then when we got Ervin to do this—he was a person of enormous substance. Although I differed with him on the Constitution and his position in '64 with the Voting Rights Act, he was incredibly good on civil liberties and bad on civil rights—that was his rap. But still the White House believed that Ervin was really a front for my investigation. They have a White House tape on that.

[reading] “On February 28, Nixon and Dean were taped in the Oval Office discussing the new Ervin committee, which they said was only a front for you, and how your investigation had pressured them, especially Kalmbach.

“Dean: ‘Well, I’m convinced it may be shown that he’s merely a puppet for Kennedy in this whole thing, for Kennedy. Finding that Kennedy is behind this whole hearing that’s going on or that’s forthcoming. There’s no doubt about it when they said, “Consider the Ervin Committee resolutions on the floor of the Senate.” I got the record out to read it, and who has special permission to have their staff man on the floor? Kennedy, right.’

“Dean: ‘Brings this man Flug out on the floor when they’re debating a resolution. He’s the only one who did this, huh? It’s keeping Kennedy’s push, quietly, his constant investigation. His committee is using their subpoenas to get at Kalmbach, all these people.’

“President: ‘Uh-huh.’

“Dean: ‘That’s kept the quiet and constant pressure on the thing. I think this fellow Sam Dash, who’s been selected counsel, is a Kennedy choice. I think it’s also something we’ll be able to quietly and slowly document. People will print it in the press.’

“President: ‘Uh-huh.’

“Dean: ‘The partisan cast of this will become more apparent.’

“President: ‘Umm.’

“Dean: ‘I guess the Kennedy crowd is just laying in the bushes waiting to make their move. Boy, it’s a shocking thing, you know? We talk about [Lyndon] Johnson using the FBI [Federal Bureau of Investigation]. Did your friends tell you what Bobby [Robert F. Kennedy] did or whether he knew what they were doing?’

“Nixon: ‘Yes.’”

Their view from the White House at this time.

Young: What were they trying to do that you knew of—to stop it, to derail it?

Kennedy: Well, I think they were always trying to say this was a political witch-hunt.

Young: Were they getting anywhere with that with Republican Senators?

Kennedy: I don't remember that they were getting very far with it. Ervin had a lot of credibility in the Senate. They were playing the inside/outside game with the press. We're looking now into the early part. That was what time?

Young: The select committee idea was approved in January of '73. That's just about Nixon's inauguration time. The trial of the Watergate people began that same month in Washington. In February, you wind up the Administrative Practices Committee, and Ervin begins.

Kennedy: Ervin starts in February. When we turned over all of our material to Ervin, we had a sort of chart laid out. It's in Jim Doyle's book [*Not Above the Law*]*—*although we can't locate it now*—*about the interconnects between the different people and different groups, going back to the ITT case, and what was happening in terms of the whole break-in. We had tracks on a lot of people who kept reappearing from that period. I think that was of some value to the [Ervin] committee.

In March it really began to pick up speed. Haldeman and Ehrlichman had quit; Dean was fired*—*all in March. I think Kleindienst resigned in April of '73.

Young: Haldeman, Ehrlichman, Dean, and Kleindienst were out, and Pat [L. Patrick] Gray*—*

Kennedy: Pat Gray had been nominated to come up for the FBI, but when he appeared before the confirmation hearings, he admitted he had turned over a lot of material to the White House and then withdrew. So the situation has moved into a very significant and dramatic time. It's about this time that*—*I don't have the date here*—*was it Dean who talked about the tapes, or was it [Alexander] Butterfield? I think it was just about this time. That was really the most damaging.

So we have now: [*reading*] "Butterfield reveals to Congress that Nixon recorded all the conversations." That wasn't until July. So we finished March with Haldeman, Ehrlichman, and Dean fired.

Young: Dean testifies in June.

Kennedy: At this time we still don't know about the tapes. But we know that these three have all been fired. [*reading*] "Former Nixon aides [G. Gordon] Liddy and [James W., Jr.] McCord are convicted of conspiracy, burglary, and wiretapping; five other men plead guilty. But the mystery still remains. In April Haldeman and Ehrlichman resign; Dean is fired." Now we have this situation: we've obviously had November of '72.

Just before the elections, we had [Henry] Kissinger say, "Peace is at hand," and that was the over-arching political issue. They had some announcements at the end, before, in October, [*reading*] "The FBI agents establish that the Watergate break-in streams from a massive campaign of political spying and sabotage. 'Bad for Nixon's re-election,' the *Post* reports." But it didn't have legs, and he wins by a major amount.

This is the other very important part, the selection of Elliot Richardson to be Attorney General, and who was going to be the independent prosecutor to investigate all this. That was really the issue we were looking at when Elliot Richardson was nominated. This was probably in April/May [1973]. At the end of April, Kleindienst resigned over the scandal. Now we're into

May, and Elliot Richardson has been selected by Nixon to be the Attorney General. And he's looking around as to whom he should select as the Justice Department's special prosecutor.

I had talked to Richardson at the time of his confirmation and had been very clear that he wasn't going to get confirmed unless he appointed a special prosecutor. This was not something that came up from the White House about "I want a special prosecutor to look into me." It's nothing that Elliot Richardson wanted. We wanted it, and I played a role with others on the committee. This was a *quid pro quo* for his being able to get through. Although he was well qualified, he would not have gotten through the Senate Judiciary Committee unless he appointed a special prosecutor. He understood that. We had had private conversations with him, and he understood it.

Young: Why in the world would he want to take on that job? He had been Secretary of Defense, hadn't he?

Kennedy: Well, he had been Secretary of HEW [Health, Education and Welfare]. He had had a whole series of jobs. I think he was Defense Secretary at the time. In any event, he was not going to get it unless he had an independent prosecutor. The question then was whom he was going to get and what the mandate of the special prosecutor was going to be. He went to three different people: he went to a fellow named Harold Tyler, whom President [John Fitzgerald] Kennedy had appointed to be a federal judge and who was a very distinguished—but very conservative—judge, highly regarded and respected, but very tough. It was really a question of whether he would be willing to be tough enough on the administration or whether he was so much law and order that he might not be willing to go after and follow the pathway of deceit and lies and cover-up.

I talked to Tyler. He understood that he needed to get a broad mandate to have this be a worthwhile endeavor. He was in the process of talking to Richardson about that mandate, and Richardson gave him, in effect, an ultimatum. He said, "You have to make your mind up," I think, within a matter of hours. He said no, he wouldn't do it.

Next he went to Warren Christopher, who, as we know, was a distinguished attorney and later worked as a Deputy Secretary of State, a person of extraordinary integrity and respect in the country. He was given the same kinds of issues and questions about the mandate, and he was unwilling to take it.

Elliot Richardson then went to Archie Cox. He had been interested in going to Cox in the beginning, but he didn't think Cox had the prosecutorial experience. But he realized that he had to get this job filled, and he needed somebody who would command universal respect.

Young: Were all of those people Richardson's choice? What did you have to do with it?

Kennedy: Well, I talked to all of them. I knew Archie Cox from the time he had been Solicitor General for President Kennedy, and I'd known him from the time he had advised my brother as a Senator. I knew him as one of the extraordinary figures of ability and intelligence and integrity. I had met Warren Christopher. I didn't know him well, but I knew his reputation, and I knew the reputation of Tyler. I had met him.

But by this time, the committee and the Democrats on it were very involved, very active, and intersecting both with Richardson and these nominees, as I was. And we come to the time where Cox effectively agrees to take the job, if he can get a strong mandate. It takes a lot of pulling and hauling—and a lot of conversations.

Elliot wants him very badly, but only at the very end agrees that the only condition under which he can fire Archie Cox is if there's "extraordinary impropriety." Otherwise, Cox is absolutely free to go wherever the trail leads him. Those were the only circumstances under which he could fire him.

Both were sworn in, I believe about the same day. I remember attending Archie's. I was trying to remember who had sworn him in. We can get that, probably, from Jim. I remember attending that occasion.

Young: Do you remember how the special prosecutor played into Richardson's confirmation hearings?

Kennedy: Well, as I mentioned earlier, Richardson would not have gotten approved unless he appointed a special prosecutor, one who had a strong independent mandate. I think Richardson was trying to have it both ways—to have an independent prosecutor, but to have a less strenuous mandate. And only at the very end was he willing to agree that the words I mentioned would be the operative words if there was going to be a difference, a disagreement, and if there had to be a firing.

Young: But am I right in thinking that the problem here, the need for that special mandate as a matter of law, was the fear or the prospect that Nixon himself would instruct his Attorney General to fire or not to? And the Attorney General would be in the position of defying the President, because he would have no mandate, no agreement prior, that the man could not be fired.

Kennedy: Well, basically, by this time, it was whether they were going to get to the bottom of it all, effectively, or whether the President was going to be able to subvert any investigation by firing people—which he eventually did—and whether the special prosecutor was going to have enough juice to at least create a sufficient row to stir up the public. All of which he did, but which he wouldn't have been able to do unless his power and authority and independence were so clear and evident. That's what was at stake in this.

Now, there was an interesting situation going on about this time. We're in May now. (Archie Cox was in from May 25 to October 20, a very short period of time.) The key element now is we know there are tapes on which the President has recorded conversations. And whether the tapes were going to get out and be public became the subject of court proceedings.

The district court held during the course of the summer that they should be. And there became what was known as the proposed [John] Stennis Compromise. The district court said they should be made public—we're looking at the fall now. Stennis—who had been the chairman of the Armed Services Committee, a very close friend of Nixon—was known as a man of very considerable integrity, but he was also known to be a man who was hard of hearing.

In the proposal, President Nixon tells Elliot to tell Archie that Stennis will listen to the tapes and send a summary to Archie Cox. At that time Archie was not all that unwilling to follow that process. But eventually he said no, that wasn't going to hold. And that began to precipitate what was going to be the Saturday Night Massacre.

Why don't we take a quick break here?

[BREAK]

Kennedy: I think I misspoke when I said that Cox was prepared to accept the [Stennis] Compromise early on. He was not. It was proposed to him, and I think history will show he was not opposed to try to look for some kind of compromise. But when it was ultimately selected, he clearly turned it down decisively and clearly.

The one other point I want to emphasize is the fact that when we had Richardson before the committee in Spring 1973 and were looking at that mandate for the independent prosecutor, I told him in no uncertain terms that the prosecutor's mandate would have to be strong. We presented him with specific changes that needed to be made, and the sticking point was the power to fire the prosecutor. We told him that for his own good there should be a clear, very high standard for firing the prosecutor. And we personally negotiated the ultimate standard with him: his promise not to fire the prosecutor unless he found "extraordinary impropriety" in Archie's performance. It was this standard that led to the Saturday Night Massacre five months later, when Nixon ordered Richardson to fire Cox, but Richardson refused and resigned instead because Archie had committed no such improprieties. I think that was the key.

That week Archie was named, the Ervin committee began its hearings, further unraveling the cover-up: Dean's testimony in June that Nixon was involved in the cover-up, disclosures in July that Nixon had been taping conversation, and both Cox and Ervin were demanding the tapes. Nixon refused, leading to the legal battle over the tapes in the summer and early fall.

Young: So both the Senate committee and Cox demanded the tapes, and Nixon refused.

Kennedy: Both of them. Then on October 10, [Spiro T.] Agnew resigns. We issued a sympathetic statement about him: "He deserves compassion and respect of the nation for his decision to spare the country the ordeal of the indictment and trial of a sitting Vice President." This is obviously in contrast to what we were looking at in terms of Nixon.

Young: No connection.

Kennedy: No connection. That was all dealing with bribery and tax evasion. Now we have Nixon nominating Ford to replace Agnew.

Young: Do you know how that came about?

Kennedy: I don't know. Ford had been the Republican leader in Congress and was very well regarded among Republicans, and I imagine not a particularly threatening figure to Nixon, not a competitive figure with him. I don't know who he was looking at and who he was thinking of as other options. I guess one other name was [Nelson A.] Rockefeller. It was batted around for a day or something, but that went down quickly.

In September, I had talked with Phil Hart of the Judiciary Committee about trying to get Vice Presidential confirmation hearings in the Judiciary Committee as they were in the House. I raised this with Mansfield and Hart and Bayh, and I had had a meeting with [Robert] Byrd and [Howard] Cannon, and [Marlow] Cook of Kentucky. Byrd, Cannon, and Cook were pushing for the Rules [Committee] to hold the hearing, but we pointed out that we had been the ones who had been having the hearings on all of this background, and we hold hearings on judges and Supreme Courts. We're the committee that knows how to hold the hearings, and the Rules Committee just deals with the rules, primarily guiding the Senate.

But the parliamentarian said that the jurisdiction fell under Rules, which covers matters of Presidential succession. They covered the matters technically. For example, the Rules Committee would outline the rules in terms of impeachment. But it seems to me that the rules of succession in these circumstances called for the Judiciary Committee. Nonetheless, it was the Judiciary Committee in the House and the Rules Committee in the Senate. The Rules Committee in the Senate didn't do a great deal. Actually, it was an issue that was going to be all decided by the House. At the time of the Ford selection, we had Watergate coming to a head and the D.C. Circuit Court of Appeals upholding [John] Sirica's ruling that Nixon had to turn over the tapes.

Young: And impeachment is in the air.

Kennedy: Impeachment is in the air. We had the White House discussing with Cox and the Watergate Committee the compromise under which Stennis would listen to the tapes and prepare summaries. I opposed this and spoke on the floor about the relationship between the Watergate tapes and the Vice Presidential confirmation. I argued that if there was no compromise on the tapes, and the Supreme Court upheld the D.C. Circuit, there could be no question the President had an obligation to abide by the Supreme Court decision. And if the President defied the Supreme Court on the tapes, he defied the Constitution, and the House would have no recourse but to exercise its power of impeachment.

In those times, we talked about impeachment, compared to these days when we're very reluctant in the face of abuse of Presidential power to even mention it. This speech was done two days before the Saturday Night Massacre. I said that Ford must be asked whether he believed the President must comply with an order of the Supreme Court to disclose the tapes, and if he says no, then Congress has the duty to refuse his confirmation.

Young: Was the question asked?

Kennedy: I'm not sure. We ought to find that out.

Young: That would have been before the Rules Committee?

Kennedy: Before the Rules Committee. So we move toward the week of October 13 and the Saturday Night Massacre. Evidently, Cox had been in discussion with Richardson during this period, but it was very clear that the White House wanted restrictions.

Young: What is not clear—although it’s not an earth-shaking detail—is whether Richardson ever ordered Cox to abide by the Nixon ruling. Apparently he did not, because on October 20 Archibald Cox refused to accept the Stennis Compromise. (That’s in Jim Flug’s timeline.) But apparently he was never ordered by Richardson to accept it. They only discussed it, as far as I can see.

Kennedy: Well, that’s the way it was reported. That’s on October 20. Cox refused to accept the compromise, and Nixon ordered Richardson to fire Cox. Richardson refused and resigned in protest, and [Robert H.] Bork fired Cox.

Young: Well, the next one was [William D.] Ruckelshaus. He was made acting Attorney General, wasn’t he?—and given the same order, and he refused.

Kennedy: And then Ruckelshaus refused to fire—

Young: And then Bork.

Kennedy: President Nixon abolished the prosecutor’s office, turned the case over to Justice, and put FBI guards around the offices of Richardson, Ruckelshaus, and Cox. I issued a statement about this being “a reckless act of desperation by a President who’s afraid of the Supreme Court, has no respect for law and no regard for a man of conscience.” Then I said, “The burden is now on Congress and the courts to nullify that historic insult to the rule of law and the nation’s system of justice.”

We had met on Friday night. I met Sunday with Hart and [Charles] Mathias and my staff at my home. We had some suggestions for a censure resolution that Burke Marshall helped draft, and we talked about having a Judiciary Committee meeting. I talked to Clark Clifford, who advised in favor of a hearing and against censure. He seemed to be already focused on impeachment, but he thought the House would resent encroachment on their Constitutional role in initiating impeachment, and that censure might be a slap on the wrist that might deflate the fact that something more significant could be done.

Young: Well actually, on the day before that 23rd meeting, the House Democratic leaders tentatively agreed to begin a pre-impeachment inquiry. Then on the 23rd, Nixon agreed to hand over the tapes to comply with a subpoena, and you had this meeting. That was all happening on the same day. There’s movement on all kinds of different fronts. So apparently when Clifford was already thinking impeachment, he was attuned to the fact that the House was moving. Jim Flug says you called [Peter] Rodino at that period and also Massachusetts Congressman Eddie Boland and House Speaker Tip [Thomas Phillip] O’Neill about the pre-impeachment.

Kennedy: Yes, I was urging House Judiciary Committee chairman Rodino to go ahead and Tip to move favorably and Eddie Boland to stay after Tip. I called Eastland as soon as this happened, and my recollection is that he was in Turkey. We can verify this, but I have a clear understanding of a lot of these things. I remember calling him, and he said he had heard it. I said, “Can we have

a hearing on this? We need to have a hearing.” He said, “We can have it, but why don’t we have a preliminary meeting next Wednesday? It sounds all right to me. If it sounds all right, you check with other members of the committee and find out.” I remember calling him and him basically giving me the okay to go ahead with the hearing. We had a preliminary meeting on this on Wednesday, had the hearing Saturday night, and the Judiciary Committee a week from that Monday.

Young: And the hearing was to be on the Cox firing?

Kennedy: On the Cox firing. We were going to have a witness, Elliot Richardson, and review the commitment made to the Judiciary Committee and review the language we had worked out in the mandate for the special prosecutor. All the conditions demonstrate the hijacking of Constitutional law, the checks and balances in this circumstance. We had a meeting in the Judiciary Committee on that Wednesday. We had set Monday for the hearing, and there was a lot of mumbling about it because there wasn’t a seven-day notice. There has to be a seven-day notice. I offered a resolution to waive it—which would be waiving the rules of the committee—and that got people worked up. But they finally agreed to have the hearing on Monday.

Young: We have a detailed summary of this crisis meeting out at your house in the documentation Jim gave you.

Kennedy: We ought to reference some of the other documents we have here: the Dita Beard hospital interview, the Kennedy Watergate by Stewart Alsop, the October 10, 1972 Sam Ervin letter, “Dear Ted,” saying that we’re doing—

Young: Ervin, in the October 10 letter, is urging the Administrative Practices—

Kennedy: —Subcommittee to do it.

Young: The next document is your communication of October 12, 1972 to the members of the Ad-Prac Committee, stating your intention to get subpoenas and do investigations. That’s Tunney, Burdick, Bayh, and Philip Hart. I notice that [Edward J.] Gurney, Mathias, and [Strom] Thurmond do not have their signatures on this.

Kennedy: They’re not on that copy. Maybe they signed, maybe they didn’t. I’m not sure. So moving forward to 1973, we’re out there on October 23 at 636 Chain Bridge Road, 8:45 to 11:15 at night.

Young: There’s one person named here I do not know. You might identify that person just before we go into this. One of them is Burt Wides.

Kennedy: Burt worked for me. He was on Phil Hart’s staff, and after Phil Hart, he came to work for me. He’s still in Washington working on different issues. He’s worked on the death penalty—he’s strongly against the death penalty. He’s still involved and active in policy issues.

Young: And Carey Parker is there—Senator Hart, you, and Cox.

Kennedy: I don't know how much of this is useful or worthwhile. It does go through the conversations about the milk producers. That was another situation where it appeared that the fix was in about milk prices, but I don't remember that in detail. This was Ralph Nader and the Justice Department looking for files about fixing prices on milk. Cox did get into the ITT file, including the documents on [Charles] Colson and noting that Ehrlichman called Kleindienst and told him not to file an appeal in the ITT case. He reports that the President turned the air blue with, "Don't you know an order when you hear one?"

Then Kleindienst was shaken by the way Griswold acknowledged at the hearings that Kleindienst tried to blame [Lawrence] Walsh at the Judiciary Committee hearings. Walsh was in the antitrust division, wasn't he?

Young: Well, he may have been, but he was also an attorney later for ITT.

Kennedy: I guess that's true.

Young: He subsequently became a federal judge and is now involved in the special prosecuting for the [George W.] Bush forty-one.

Kennedy: Then he mentioned how after the Court of Appeals—which sustained the government's right to release the tapes—Cox and [Charles A.] Wright [University of Texas law professor who argued case for Nixon] felt the White House would compromise on the tapes, but Cox said the White House never had any intention of compromising. So they never thought that anything was going to come of it.

Young: Then you're getting down to the business of the new special prosecutor.

Kennedy: I don't know what's useful and important about Cox in here. I'll tell you one thing that was important on this: he did mention—as we've seen on the first page—about ITT and Kleindienst lying. That got in the newspapers afterwards, and the Republicans went on to say that this shows that Cox is just a Democratic figure, because he's leaking information that's highly sensitive. I think Cox gave quite an appropriate answer: that this was important information for the committee that was going to investigate the extent of the treachery. We responded in a similar way that we had to know that. It went by very quickly, but that was one thing that did come out of this. I never knew who passed that on.

Young: I guess the purpose of this meeting generally—with the firing just having taken place, and committee hearings in prospect—was to review the evidence and what would be said and emphasized at the committee hearing. I guess that was the case, but the notes of this meeting suggest it was a very extensive review of the whole background.

Kennedy: He covered just about everything they were doing: looking into San Clemente and Key Biscayne and national security, and press reports indicting Colson for his part in the Ellsberg break-in. He mentioned here that Richardson never twisted Cox's arm. Richardson did what he had to do to keep clear with the White House. I think that's a useful bit of at least Cox's view about Richardson's attitude and temperament.

He had a reference to this townhouse fundraising operation. *[reading]* “Kalmbach and Jack Gleason under Haldeman raised large sums of money, mostly in cash, to distribute at state elections. Gleason was instructed to give the money to candidates in cash—then the plumbers and wiretapping of government officials. The Department of Justice is defending government employees like Hunt and [Jack] Caulfield who were being prosecuted. If Cox indicted government employees, the Department would be in the awkward position of having to defend them against Cox in the criminal proceedings. The most sensitive areas of White House pressures were on the wiretaps of government officials and reporters like Joe Kraft and other abuse of government agencies for political purposes such as the IRS [Internal Revenue Service].

“We discussed the reasons why the special prosecutor must be independent: pressures, getting Presidential papers, challenges to executive privilege. The White House was arguing that the special prosecutor couldn’t sue the President because he was the President’s employee. Cox felt that if he was just a Department of Justice employee, there was no independence. That gets back to his mandate. He felt that he had been fired for one of two reasons: he turned down ‘a deal that was good for everyone.’

“But one reason he took the job as special prosecutor in the first place was to prevent such deals. He turned down what he characterized as ‘a deal that was good for everyone,’ but obviously it was not good in terms of the public interest. He thought he was fired for that reason or because he was too independent. He said that the testimony he would give would be that he came before the committee five months ago, and the two essential things in his contract were independence and his ability to challenge claims of executive privilege, and that had worked well until ten days ago.

“Richardson had raised the question of jurisdiction, but there had been no effort to control or pressure Cox. Cox felt free to advise Richardson of his actions. But it came apart ten days ago, and it was important for Congress to take steps to reestablish the special prosecutor. It won’t work in any other way. The importance of getting information from the White House files because the evidence was necessary in this kind of case.”

Young: So the President was not at that time under a legal obligation to appoint a special prosecutor.

Kennedy: No, he was not.

Young: And that goes back to the importance of making the appointment of an independent prosecutor, with real independence, a condition of Richardson’s confirmation as Attorney General.

Kennedy: And in the future, because Richardson is fired. We need an Attorney General, who needs to get confirmed. So we’re looking at this situation again.

Young: So now another method has to be used to create a special prosecutor with independence. Is that the right reading of this?

Kennedy: I think it is. There are two requirements: one, being independent, and second, being able to get information from the White House despite claims based on executive privilege. Cox

talks about this. He says, “There’s a choice between setting up an office of special prosecutor as a Presidential employee and having the Court make the appointment. The Court appointment is adequate for a Grand Jury, but is sticky at the actual indictment stage. Cox prefers to set up a similar force of special prosecutor and deputy special prosecutor, both named by the President and confirmed by the Senate, removable on limited conditions. He prefers that type. They’re talking about different ways of setting up a special prosecutor.”

Young: Nixon probably is in opposition to anything real. So I think the question would be how you get another special prosecutor with the proper credentials.

Kennedy: That’s right. That’s what we’re going to get into on this. [*reading*] “Richardson had mentioned to him that he philosophized about losing one’s job, which was not as bad as having one’s head cut off, and at first Cox thought it was Richardson’s job. Then it became apparent there were two heads and two jobs. Cox said the conversation was abstract, and a dense fog covered it—an extraordinary conversation. Richardson did not press Cox.”

Young: For the first time—at least the briefing materials—there appears the information about the CIA [Central Intelligence Agency] and Dick Helms’ involvement. That’s at the bottom of page 7, item 17. It appears that Cox had been privy to a lot of internal documents, and now this comes out, but this is before it’s public knowledge.

Kennedy: That is [*reading*] “that the CIA had been involved in Watergate and had been used by the White House, but had not willfully participated in the cover-up. A memo from Helms had been discovered that cast doubt on the conclusions because it’s just that Helms had, in fact, told the FBI that CIA interests might be jeopardized by the FBI investigation. Parts of the Helms memo had been published in the [Stuart] Symington Armed Services Committee hearings on William Colby’s nomination. The memo had apparently been a late submission to the Symington committee, yet had not been included in the initial package of Watergate documents submitted by the CIA to the Ervin committee to the Senate, the House and to Cox”—meaning that the CIA had been involved.

So let’s just get back. At this point, we do not have an Attorney General and we do not have a special prosecutor. We’ve been in close contact with Cox about his testimony, and we are now looking at—

Young: —the week following.

Kennedy: We had gone back to Ford. After Ford, it moves very rapidly. The House moves on toward the impeachment, and the President resigns. This is the Supreme Court, July. Let’s get to October. October 20 is the Saturday Night Massacre, and then in November Nixon declares, “I’m not a crook.” The White House can’t explain the gap in the subpoenaed tapes. That’s in December. Then the Supreme Court rules unanimously in July that he must turn the tapes over. On July 27 we have the impeachment, and on August 8, Richard Nixon becomes the first President to resign. Ford goes in and pardons Nixon of the charges.

Young: Now, I think it will be useful to go back a little bit for the event-packed period. The House is moving toward a pre-impeachment inquiry on October 22. On October 23, Nixon

agrees to hand over the tapes under a subpoena. On the October 24 or thereabouts, the Eastland hearing begins on the Cox firing.

Then I don't know what's happening in September, but in November, Nixon is naming [Leon] Jaworski to be a special prosecutor. How did that come about, do you know?

Kennedy: Yes. Let me go back to Monday, October 22. Cox comes before the committee, and we make a statement that if some of the charges about the firing of Cox were true, they would constitute a clear obstruction of justice, which is an impeachable offense. Then Congress can't stay silent. Democratic leaders met and tentatively agreed to have Judiciary begin that pre-impeachment.

Now, to get back to where we were before, on Wednesday after the Saturday Night, there's a rather tumultuous meeting of the Judiciary. Strom Thurmond wanted to postpone the meeting for a week. I spoke for prompt action. Byrd suggested a closed session with Cox. I objected to this. Since all the other players had been holding open press conferences, the public would not understand why Judiciary would go into secret session. Finally we agreed to October 29. So we have both of them coming up on the 29th.

The *Times* clips give their presentation. We're at just about the end of October. At that time, the question was what President Nixon was going to do in terms of the Attorney General. The person he had his eye on was Bill Saxbe, who had been the Senator from Ohio. Saxbe wanted the job, and he also thought that Nixon had acted honestly and that Cox should have accepted the Stennis proposal. We met with Saxbe on November 1, the same day Nixon announced the new prosecutor would be Leon Jaworski from Texas.

I called Bill Moyers to see what he thought about Jaworski, who had been close to LBJ [Lyndon Baines Johnson]. We were concerned about his reputation and that he would strike a deal with Nixon. We wanted to get a better feel for him. Eventually, Jaworski was given Cox-type powers and proceeded to take the tapes case to the Supreme Court, and he followed through assiduously.

On October 14, during the Cox hearings, Bork testified regarding the new charter for Jaworski that opened up a massive new loophole. For some reason, we were unable to be at Bork's testimony but sent a long list of question relating to the Watergate investigation and the new mandate for the prosecutor. He pointed out a revision in the original version to correct what Bork said was a drafting error for the removal of Jaworski. They reaccepted what we had effectively included in the Cox—

Young: They reaccepted that? It was not clear to me what the outcome of that was. How in the world do you explain why Nixon was now willing to buy what he had tried his best to undo before? That was almost his death warrant, wasn't it?

Kennedy: It was, unless he thought that Jaworski could work out a deal. He had an Attorney General who believed that compromise was possible. I'm trying to think of who else was being considered.

Young: Who is no longer in the White House? [Alexander] Haig is there now because the old crowd is all out: Dean, Haldeman, Ehrlichman. The Watergate people—the henchmen—are in

jail or on the run. It's historically interesting that Nixon had lost on all fronts and didn't have a leg to stand on, it seems to me, except the hope of another compromise.

Kennedy: I think that's probably what he thought he could achieve, and there were some obvious concerns on our part with the initial provisions that Bork had drafted on changing Jaworski's mandate, that that would be it. But we were able to get the changes reversed. They complained and said that some of the changes were drafting errors. In any event, the other provisions were reinstated, and so Saxbe and Jaworski were in. Cox and Richardson were out.

You have to get a sense of the time, too, to try to transport yourself back into the time. This wasn't just a series of incidental switches of members of the Cabinet—such as that Porter Goss today [May 2006] is leaving and the new general [Michael Hayden] is coming in as head of the CIA, and there's a little flap about it—these were earth-shaking, monumental events in 1974 that were of overwhelming drama and importance and consequence. And I think for the most part, by this time, people felt that the President's days were really numbered and there wasn't any process or procedure or individual who was going to be able to stand in the way.

That's what you have to come back to, not that we have a different mandate, a different Attorney General, a different special prosecutor, and we're going back to where we were at the time of the appointment of Cox and Richardson. We had gone beyond that. For those who go back into that climate and atmosphere and read through the papers, this was on its way. This President was on the road to impeachment, and they weren't going to be able to halt it, certainly not after the Supreme Court had issued its ruling on the availability of the tapes. There just wasn't going to be any way to stop it. I think that's really where we were.

Young: Do you have any thoughts about why Nixon would install a taping system that covered everything?

Kennedy: President Kennedy had a taping system. I'm convinced that one of the best things historically is those discussions of the Cuban Missile Crisis, and I think that's what he had it installed for. Obviously, he was a historian, and he wrote, and I think he was always interested in preserving important matters for history.

Young: But didn't he activate the machine?

Kennedy: He activated it. He chose when to activate it, and did, obviously, on the Cuban Missile Crisis. He did it with regard to the discussion of going into South Vietnam. He has [Richard] Russell's and [J. William] Fulbright's voices discussing Vietnam. He had it for macro events. Nixon must have heard that my brother had it installed, and he probably wanted it as well.

As I understand from my trip down to the Miller Center, you have hours of JFK tapes of conversations to go through. They still have some up there at the library, but there are not a lot more. There's not a great deal more material, and what they do have at the library is all on matters dealing with national security.

Young: But these Nixon tapes were automatically started. They were voice activated, so everything was recorded. You had to stop it. You know, the National Archives have now made a deal with the private Nixon library to bring it into the national archive system. That has just

happened in the last couple of weeks. So the Nixon library is now going to be converted from a private to a government facility. Actually, Tim Naftali, who has been the recordings person at the Miller Center, is going to be the director of the new Nixon library. We'll see how long that lasts. He's a friend of mine.

Kennedy: Is he going out there now? Is he moving out?

Young: Yes, he's going to take it over July 1. Allen Weinstein, the National Archivist, is in the process now of shipping all the Nixon tapes out there to the library. So they may be soon leaving our shop—before we've finished with them.

All right. So now things truly unravel in very short order. Is it the case now that when the House of Representatives fires up their impeachment investigation, the Senate can no longer be doing what it has been doing? Does it put a damper on what the Senate can do?

Kennedy: I think so. Once the House Judiciary Committee really gets into it, that's where the focus and the—

Young: That's in July.

Kennedy: That's in July of '74.

Young: They're already voting on the Articles of Impeachment.

Kennedy: It goes back to the seizing of the tapes, the special prosecutor. Here you have Jaworski following along, issuing a subpoena for the White House tapes, and the President submitting the tapes to the House Judiciary in April. It was all over then, effectively, because the tapes themselves were such an indictment.

Young: At some point, a Republican group from the Senate goes up to talk to Nixon, to tell him that he will lose; he will be convicted if he goes to the Senate. Do you have any insights on that? Years ago I was talking with Hugh Scott. I think he and Barry Goldwater went up there. Was that before the Articles of Impeachment were voted, do you know?

Kennedy: I don't remember. It came out later. I don't think it was known when this was going on that they had gone down there and told him. It came out much later. I believe Scott must have been the Republican leader in the Senate at that time. Goldwater was an increasingly significant figure in Republicanism. So that was pretty powerful.

Young: Getting to Nixon at the right time when he was accessible was quite a thing with Haig.

Kennedy: Controlling him or not controlling him—it will be useful to get the full information on that.

Young: Looking back on it, what kind of role would you assign to the press—the media, as we call it today—in this whole affair? Bob Woodward.

Kennedy: I think that the chances of the truth being known on this were substantially advanced by the fact that the *Washington Post* kept at this in a very aggressive way, kept the issue front and center. Over the time I've been in the Senate, I've seen that the exercise of executive privilege and the respect for being able to hide behind executive privilege is such a powerful factor. History will show that if you're the chairman of the committee and you have a majority from that party, more often than not you'll be able to get relevant information from the Justice Department on nominees. But if you're not, you aren't able to have very much easy availability or access to executive office memoranda. We got much more information during that whole period of time than we ever think of getting at the present time. For example, we got papers about Brad [Bradford] Reynolds, who was interested in being head of the civil rights division. We got documents that he authored. We got much more information than we ever think of getting at the present time.

I don't know what would have happened if they hadn't had those tapes. Maybe Archie Cox could have unveiled significant information, but it was the sequencing, going back, I think, from ITT all the way through this. You had individuals like Haldeman, Ehrlichman, and Hunt, Kalmbach, political operatives, White House operatives, with the arrogance of power, their belief they could get away with anything. They did the work of the break-in and handled the follow-up clumsily, but still I think it would have been very difficult to unravel all of that if we hadn't had a press just hammering away day after day after day.

Obviously, it weakened those figures who testified before the special prosecutor. Would Dean have been as forthcoming as he was if he hadn't felt the intensity at the moment he testified? Or would Butterfield have revealed the taping situation? I can't believe they let him go testify up there, knowing that he was going to blow the whole thing open. What was that all about? Didn't they know what he was going to say? *Did* they know what he was going to say?

By that time it was pretty well decided. So the answer is clearly that the press was instrumental in this. Whether we would have been able to have this unraveling without them, I'm not quite sure that would have taken place. If you didn't have the press and you didn't have the tapes, it would have been very difficult, sort of like Abu Ghraib without the pictures. There are reports about these kinds of things, but I think these people were ruthless enough, capable enough to be able to—

You know, they almost got away with the Stennis Compromise. Who knows what Stennis would have done if he'd been able to listen to this? I have a lot of respect for him, and maybe he would have spotted it and blown the whistle. But it's awfully, awfully difficult. As Archie Cox mentions, he needed the independence and the ability to get into executive privilege, those two things. He said it well on a Sunday night out at my house in McLean. You needed the independence and the ability to get behind. I'm convinced that Stennis would have been too loyal a soldier about the executive and about the institution, about what this would mean in terms of the country. I think he may very well have come down on the wrong side, even if he'd been able to understand it and detect what was really at stake.

Young: Well, thinking then and now, it's interesting to speculate about the standing of the President as an institution in those days, and the call it makes on giving one the benefit of the

doubt. Today I'm not so sure the institutional standing of the White House is what it was then, even though Lyndon Johnson had suffered a lot of loss of confidence.

Kennedy: I think that's true—the reluctance of the Congress to investigate not just what information was available to the President, but how it was used. They absolutely stonewall. I actually have an amendment to the Intelligence Reauthorization Bill that says they have to provide us with the President's briefing books. The President said, "Members of Congress have the exact same material I had." Well, if he has his Presidential briefing books, make them available to the Intelligence Committee and the Foreign Relations Committee. They won't do that. They won't call up the Foreign Intelligence Reauthorization Act because of my amendment that says they have to make that available, even though they've made it available to three of the members of the 9/11 commission. They made it available to them, but they won't make it available to the Intelligence Committee. I'm not saying they have to make it available to every member, although I would have thought if they make it available in Room 407 [the secure room] and if members want to, they can go up and read it—not take notes, but go up and read those things. But they refuse to do it.

We can't get past all that. We can't get through to that. When the Democrats controlled the Presidency, there were 1,100 subpoenas during the [William Jefferson] Clinton Presidency. There have been three during this Republican Presidency—three. There's no investigation. The issuing of a subpoena is very interesting, because they can be challenged right up to the time on the floor. One might remember what they did with President Clinton: the full Senate had to reaffirm the subpoenas for them to have any legitimacy. We voted on those.

The procedure that's followed is that banks and telephone companies will answer a subpoena if it's for routine records. If you're going to subpoena individuals, you have to get the full committee to do it, and if you're probably going to be challenged, you have to get the Senate. The way subpoenas are handled is a very interesting Constitutional issue. For the most part, businesses are fine. If the committee subpoenas them, they and the information they give are protected. They say, "Why are we going to cause ourselves more problems?"

We were able, as a committee, to get telephone and banking records that tied the Republican National Committee to the burglars—\$25,000 was the connection with the burglars. You can begin to sniff out and wonder why Nixon was doing this. If you have the Republican National Committeeman giving money to one of the burglars—and this is Nixon's person so there's this kind of connection—there's something more to this. But the idea that we would have ever gotten to the extent of this—look what it took. It took the tapes and a special prosecutor to finally get the job done. Whether we could have ever gotten that job done just on the basis of a committee is a real question.

Young: Do you think the deference to the office at the Capitol or in the Senate is still very high?

Kennedy: I think it is high, particularly high when you have a majority of your party.

Young: Independently of the partisan.

Kennedy: If you look back on it, it's whose ox is getting gored. Republicans are looking for information on judicial nominees; they're very tough on it. They use the other arguments on

executive privilege, but by and large, executive privilege is respected, and I think the American people understand that. The President ought to be able to get unfettered guidance and information.

That can apply to the Secretary of Defense, Secretary of State. But does that apply to a Solicitor General when he's making a decision to bring a case to the Supreme Court? I'd say it doesn't, because who does the Solicitor General represent? Not the administration. He represents the United States. He represents all Americans. And if he's making a judgment decision with regard to all Americans, we ought to know his thinking, his reasoning, his rationale, so we know what his views are and what his values are.

This administration takes strong exception, and they would not provide us with information about recommendations that were made by [John] Roberts when he was the Deputy Solicitor General. We couldn't get his records, couldn't find out what his recommendations were. He was put into the Solicitor General's office as a deputy to deal with "the political hot buttons." Shouldn't we, the American people, have had access to that? Of course we should have had access, but we couldn't make that case stick. The American people won't back you up on that kind of thing.

Young: And you can't look to the courts?

Kennedy: No, you can't look at the courts nowadays. The overarching issue now is executive power, authority, which I think this President [Nixon] really didn't even imagine. He had it with regard to foreign policy, certainly, and he understood how to deal with it. Ford came after him and Attorney General [Edward H.] Levi after Saxbe, and they invited Democrats in to work out the FISA [Foreign Intelligence Surveillance Act] agreements so that there was only one vote against it. They did it in a strong bipartisan way, dealing with national security, and that's the way it should be dealt with. That's Ford, that's Levi, that's the way to do it as compared to now, where you have the big NSA [National Security Agency] eavesdropping, and what the administration wants is a fight.

They want to fight on it because they think it's politically helpful. They want to use the division for political purposes. They like division, they like controversy, they like conflict, they like emotional kinds of issues like we're going to be taking up now. We're going to spend six or seven weeks on flag burning, as though that's an issue in Massachusetts, an issue in the country. And gay marriage—that's a real issue or a problem in the country? I mean, states are dealing with this or not dealing with it.

Young: What's that about? It's about showing your colors and standing tall.

Kennedy: It's about the politics of division, the politics of fear, frustration, and division. It's not the politics of unity, of bringing the country together to deal with central challenges.

Young: But does it pay off?

Kennedy: Well, it has paid off, and I think the country is getting tired of it. My book about putting America back on track [*America Back on Track*, 2006] is about how one way is the politics of hope, that's [Abraham] Lincoln at the time. Read his great speeches about the country

coming together—we pray to the same God. We come from different backgrounds, but let's try to get this country together, bind up its wounds, look to the future. We can do it, that's what a country does when it's at its best. That's the different kind of appeal in terms of the politics.

But with President Nixon it wasn't so much. He had domestic issues. He had some affirmative action legislation. He had fair employment legislation. We can get into it another time and talk about some of the domestic politics he was involved in. It was so overshadowed in the very beginning because of the war and then with this. When he was almost about to be impeached, Mel [Melvin R.] Laird talked to me about having a “pay or play” healthcare system, and I was almost for it. I said, “Let's get to it. That sounds good.” He wanted to divert attention. It was very clever. Mel Laird thought we could do a national program to divert attention, but the tide had run out on this guy.

Young: He just seems to have been so obsessive about winning and winning big. Why did they need to disorganize and try to discredit and do all these dirty tricks to the opposition? I don't know.

Kennedy: It was completely unnecessary. I think it's probably more of a reflection of an insecurity that worked its way through.

Young: It's also possible that as things got worse, he got more immured in the White House, and he couldn't expose himself very much to what was going on on the outside.

Kennedy: I think you can get more isolated and insulated. This was an extraordinary, intense time. He gets elected because he says, “I have a secret plan to end it.” He doesn't, and he doesn't quite figure out how to get out of it. Kissinger says, “Peace is at hand” two weeks before, and they take advantage, give an assurance to the country. The people voted against the government, and they said, “Okay, we'll follow this.”

And then they don't have a plan, they can't get out, and so we had an enormous restlessness in this country—turmoil, incredible turmoil—going on at the time. Even though he had gotten the breakthroughs with China and other things that were truly monumental, it's building in intensity. He had no way, knowledge, understanding about how to deal with it, and he didn't have the plan to deal with it. People caught on to it, and so he became the arch figure of deceit and secrecy. And then he played into that out of what he perceived to be necessity.