

**Frank McCulloch Oral History Interview – JFK#1, 04/28/1967**  
Administrative Information

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**Biographical Note**

Frank McCulloch (1905-1996) was chairman of the National Labor Relations Board from 1961 to 1970. This interview focuses on John F. Kennedy's time as a senator and the changes that occurred in the National Labor Relations Board during the Kennedy administration, among other topics.

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Oral History Interview

with

FRANK McCULLOCH

April 28, 1967  
Washington, D.C.

By Larry Hackman

For the John F. Kennedy Library

- HACKMAN: Mr. McCulloch, were you active in the 1960 presidential campaign?
- McCULLOCH: Yes, although my energies were mostly absorbed in the campaign for reelection of Senator Paul Douglas, whose administrative assistant I was at the time.
- HACKMAN: Did you attend the 1960 Convention at Los Angeles?
- McCULLOCH: No, I did not.
- HACKMAN: Do you know why Senator Douglas didn't go to the Convention that summer?
- McCULLOCH: I don't think I have any special insights. He was terribly absorbed in the work of his own campaign. He had been going back to Illinois as frequently as he could, and the legislative program was also a very demanding one. So between the two of those things, he was physically very, very tired. Moreover, although he had sympathies with reference to the candidates who were before the Convention and likely to be, he had not taken a public position with respect to them, if my memory serves me correctly. It may be in part because of that and

because he wasn't enlisted either for Governor [Adlai E.] Stevenson from his own state, whose name was being put forward strongly by a lot of people from Illinois and elsewhere, as well as then Senator Kennedy and Senator [Lyndon B.] Johnson that he may have preferred a bit of official neutrality. Although I know he must have had views, which perhaps this oral history program will get on another tape, he had not expressed them.

HACKMAN: Right. Do you have any insight into the reason for the small margin by which President Kennedy carried Illinois in 1960?

MCCULLOCH: Oh, my insights wouldn't be as good as those of other people who were closer to it or as good as my own insights if I had refreshed my recollection prior to this interview. I'm sure that the fact of religion was a matter that made a substantial difference in some areas of Illinois where Catholicism is still not too well understood. Beyond that, it's difficult to say. Illinois has a tendency to be, I think, more of a Republican than a Democratic state, and unless you can jolt it out of its normal Republican frame of mind, as the Senator had been able to do after winning the confidence of people to the degree that he had, they tend to follow some of their older voting patterns. I don't believe there were other principal positions of Senator Kennedy that lessened people's confidence in him in any sense. I can't quite recall the campaign well enough to feel that he lost votes because of his stands on the issues. If because he was a good civil rights advocate, he had lost votes, Senator Douglas would have lost those votes, too.

HACKMAN: Right.

MCCULLOCH: But he didn't. Then it was also true that in 1948, the first time that Senator Douglas ran, as in 1960, he ran very far ahead of the national leader of the ticket. In 1948, of course, it was President [Harry S.] Truman. In 1960, it was President Kennedy. And I think with other local factors operating, the tendency of the Midwest, under the domination of the Chicago Tribune and the rest of the conservative press, is in a Republican direction,

and it takes a little time for people to get jarred out of that and to come to know national candidates. They were jolted out of it by Douglas' own record, and if they had known more about Senator Kennedy than they knew, they would have given him a much more substantial margin.

HACKMAN: I see. Do you recall that during the period between the election and the inauguration Senator Douglas was involved in working on a task force for President Kennedy on depressed areas? Were you involved in this to any degree?

MCCULLOCH: Well, I can't remember the specific details too much. I had various instances of contact with that legislation from its very beginning. I helped the Senator to draft it and to plan the hearings, to plan the scope of the legislation and all, in the early instances where the Senate and the House had adopted it, and it was vetoed by President [Dwight D.] Eisenhower. And the people who were planning Senator Kennedy's campaign asked me to go into West Virginia during the campaign itself and help in connection with one of the seminars in West Virginia that emphasized this particular piece of legislation. And so it's impossible for me to think that the Senator was doing very much on that task force without my being on the fringe. But I don't have a recollection of having written any special thing about it.

HACKMAN: In this seminar you just mentioned, is that the one that was in Charleston that William Batt and Hulett Smith chaired? Do you recall if that was the one?

MCCULLOCH: Well, I remember William Batt being there and Congressman [Daniel J.] Dan Flood and a number of others.

HACKMAN: Right. Did you work closely with Senator Kennedy or his staff after Senator Douglas had left the Senate Labor and Welfare Committee, and Senator Kennedy took over as chairman of that subcommittee that handled the depressed area legislation? I believe Senator Kennedy led the fight for that legislation in 1956.

McCULLOCH: Well, our offices were in close contact, both because Senator Kennedy and Senator Douglas saw eye-to-eye on so many issues and worked together and because Senator Kennedy was taking a leading position on the Senate Labor Committee. And then two of his chief staff members, [Theodore C.] Ted Sorensen and [Myer] Mike Feldman were very well known to us, and we had worked with them even before they had gone on to Senator Kennedy's staff. And so it was quite natural that we would indeed work closely with them on that measure and a good many others.

HACKMAN: When did you find out that you would be considered for an appointment if President Kennedy was elected president?

McCULLOCH: Oh, not until some weeks and months, or weeks, at least, after he was inaugurated. This hadn't particularly entered my mind. I had come to a point where, after serving with Senator Douglas for two terms, there was some reason to think that I should move on. The Senator himself was entitled to make a selection of new blood if he wanted it for his administrative assistant. I was reaching a point in years where I felt I shouldn't expect to remain one of his chief advisors forever, although this is a most rewarding and heartwarming kind of a position in which to be. And I was myself, considering whether I should go back to the practice of law, seek to explore possibilities of teaching positions, or find some other outlet for my own energies.

HACKMAN: I see. Was there ever any question of any appointment other than the National Labor Relations Board?

McCULLOCH: Oh, I think Ralph Dungan joked me about some ambassadorships at one time or another. But I don't believe that those were under very serious consideration. We had a couple of telephone calls in which he even mentioned the countries. But once again I think that this was rather more in the light of an old friend saying that he was having a hard time filling certain ambassadorships and why didn't I think of becoming one of those? But I had neither the background knowledge of the countries under consideration nor the means that might have made me a very good candidate for any of those positions.

HACKMAN: Would you want to comment on what countries those were?

McCULLOCH: Well, I have a hard time remembering them now. I think there may have been a Latin American country for one and an African country for another, about neither of which at the time did I feel I had any great knowledge. My recollection is that after talking with Ralph, my wife and I went to an atlas to see where at least one of the countries was precisely located.

HACKMAN: I see. [Laughter] Was there ever any question in your mind after the National Labor Relations Board position was mentioned to you that you wouldn't take the job?

McCULLOCH: Well, I had to debate with myself to a degree whether I had the qualifications that were sufficient to the demands of the job itself. I didn't want to allow either the Senator's recommendation of me for this position, for I know he did recommend me, or the President's selection, if he were to prove willing to select me, to lead either of them into a kind of a choice where I would prove not sufficient to the work to be done. This was not an easy question to answer because on a senator's staff you have such a generalized set of responsibilities, and you don't acquire some of the very specific skills that you need in handling the work of an administrative agency. I suppose I should say that I persuaded myself, but with some difficulty, that I could handle the matter. Some of my friends were kind enough to be advocates of it more staunch than I was myself.

HACKMAN: Do you know if there was ever any question of anyone else being appointed as chairman, other than yourself?

McCULLOCH: Well, I'm sure that the President must have considered other possibilities. And there were rumors about various persons who were being considered, but neither he nor any one of his advisors ever suggested, so far as I know, that there were others. But it would not have been fair to the President if Ralph Dungan and James Landis and others hadn't canvassed a very broad group. I've always thought that [W. Willard] Bill Wirtz would have been the ideal chairman for the National Labor Relations Board. And I can think of twenty persons who would have filled this position with much more experience than I was able to bring to it. Whether they went through a list of twenty, such as I could set up, before they came to me, I shall never know. This is a way of making a man feel that he is the one who is wanted and then to motivate him to give out in terms of public service with all his energy when he is appointed.

HACKMAN: How did you find out about your appointment, do you remember?

McCULLOCH: I cannot recall whether the President's office advised Senator Douglas in the first instance or whether James Landis, who was then serving as the President's eyes and ears, or Ralph Dungan was the one to let me know. I'm embarrassed that I don't recall who was the messenger. I think it was probably one of those three.

HACKMAN: Let's go on then and talk about the situation when you went to the National Labor Relations Board. Had you played any part in the proposed reorganization plan at that time in which I know James Landis was active?

McCULLOCH: Really not. Of course, before I was appointed and after I was appointed, I had conferences with James Landis about some of the problems

of the Board. Included among those were the problems of delay, the very heavy case load, the volume of work that had to be done, and the need for some change in that pattern. His own report had, as I recall it, come out very close to the time, shortly after the time of the President's appointment. I'd have to check back to the precise date of that. And he had been consulting with a lot of people, and I was only one of quite a few. When it came to devising the means by which the proposal in that reorganization plan should be framed, the precise wording and what it should do, this I think the White House and Mr. Landis kept a little closer to their chest. So we were really informed of the wording, the formulation of it as a fait accompli. But we knew the objective at which it was aimed, and that, of course, had our wholehearted support as Mr. Landis knew before he ever recommended it to the President.

**HACKMAN:** So your ideas when you came to the National Labor Relations Board were pretty clear as far as to what you thought needed to be done concerning the organization?

**MCCULLOCH:** On this point, yes. There was another point. Congress had authorized the Board to delegate some of its powers in representation cases to regional directors. The Board had not acted. And before I ever got here, it was my own firm conviction that the Board needed to act. But I found my colleagues were of the same mind. They'd been dragging their feet a little bit because the American Bar Association crowd had doubts about it. But, adding my own conviction to theirs, we moved within a very few months, as soon as we could get all the details worked out on that phase of it. Then the reorganization plan, which was something else which the President put forward, was quite parallel, but in the other major area of the Board's work, unfair labor practice case handling.

HACKMAN: Right.

McCULLOCH: And so the two of them in our thinking went somewhat side by side: one of them in line with authority we had under the law; and the other one an authority which we were afraid we didn't have and required presidential action through an Executive order or through the reorganization plan to enable us to carry on.

HACKMAN: But you were working on the delegation of power to the regional directors at the same time the reorganization plan was being considered?

McCULLOCH: That's quite right.

HACKMAN: How do you account for the refusal of the House of Representatives to approve the reorganization plan?

McCULLOCH: Oh, this was a welling up of a good many different discontents. Basically, I think it was the employer group who are opposed to the policy of the law itself and, therefore, want to have every procedural opportunity that is available to them to obstruct the operation of the Board which is carrying out that policy. And this would get framed, however, in many other different kinds of ways. They would express resentment that the plan was written so generally because, in retrospect, I think we can agree that Mr. Landis made a mistake in developing plans with identical wording to apply to three or four or five different agencies. The situations in the agencies were different, and he used words which might suggest that we would delegate this authority in our unfair labor practice field to employees other than trial examiners. And so some of those who opposed the plan seized upon this and made a big whoop-to-do that some little grade-14 attorney was going to get the job of issuing out some of these initial decisions and the presidentially appointed Board members would see them, if ever, only in a very routine way. Now this was really nonsense, as we explained in the hearings, because the reorganization plan did not amend the statute, and our statute, and the Administration Procedure Act, made it impossible for us to delegate

unfair labor practice case decisions, to such an employee. The plan in the breadth of its words, however, seemed to make that possible.

The second ground of objection was that some of the members of Congress said, "We've never seen this before. Why didn't Mr. Landis or some other agent of the President come up and consult with us before it ever was sent up?"

The third one was that they weren't convinced that the review by the Board, of the decisions made by the trial examiner, would be sufficiently broad to assure that the parties, whose rights were being adjudicated in the case, had had an opportunity to get to the presidentially appointed Board members. So at this point they weren't talking about grade-14 attorneys, they were talking about our trial examiners and the inadequacy of our trial examiners as compared with Board members.

The fourth point that they made was that some of them didn't like some of our trial examiners and that these fellows couldn't be trusted.

The hearings in the Senate were quite complete. We thought that there, answering the questions raised by Senator [Karl E.] Mundt, Senator [Cart T.] Curtis and the others, that we had really answered all the formal objections that were put forward--and indeed I believe we had Senator [John L.] McClellan's acquiescence in the desirability of the plan--and that we would have had approval in the Senate.

But in the House it was a different story, and I guess we were also hurt by the fact that President Kennedy had so many other things going at that time. This was in the first fine flush of his Presidency, and there were other legislative objectives that were much more important than this one. And he and his staff were so fully engaged in pushing for the other legislative aims with a greater degree of priority that we, a little agency of about 2200 persons, were left very much alone with only the mammoth prestige of the President behind the offering of the plan, but with certain pressure groups very diligently building up opposition along some of the lines that I have just mentioned. Top labor spokesmen endorsed the plan, but they too were engrossed in other more central legislative drives. Moreover, some of

their lawyers, who defend union respondents against unfair labor practice charges, were frankly reluctant to have Congress adopt the streamlining changes of the plan. And so in urging its approval, we felt very much alone.

When it came to consideration in the House, the fact we had good hearings and approval by the Committee there was not enough to overcome some of the gripes. The final gripe was undoubtedly based on the realization that this was a way for some members to express their discontent with a constructive and liberal interpretation of the labor laws. They were against unions. They were also against a labor board which protects the right to organize and the right to bargain collectively. And this was a little chance to slap at the Board. I don't believe there was any feeling against the President personally. I think there was some feeling against the Board as an institution which protected rights that they didn't approve of.

**HACKMAN:** Did the Board have any contact at all in this legislative effort with the White House legislative office or anyone over there?

**MCCULLOCH:** Well, I tried to keep them apprised of what was happening in the Senate situation which, of course, I knew a little better than I knew in the other body because I knew more personalities on the Senate side. I myself went to call on several members of Senator McClellan's Committee to give them private assurances, as well as those that we gave in the hearings, that this thing not only could work but it was very greatly needed to deal with our backlog. That went off all right. But on the House side I was not as well known. I didn't know the members there as well, and our own Democratic margin of strength there was somewhat less. So that on this issue you really had operating the old coalition of some of our anti-labor southern Democratic friends and the northern Republican group. And this faction coalition, asserted its will on this reorganization plan and defeated it.

HACKMAN: Do you know if any of the other Board members were active legislatively in this thing?

McCULLOCH: Well, I think there were some personal communications with some of the members that they knew. But we have to be guarded about the way we respond to requests for information and be careful not to violate the law by using public monies to go up and constitute ourselves a lobby. And so we didn't do that, although I did traipse the halls a little and answer as many questions as I could get generated.

HACKMAN: Did you feel that the failure of the reorganization plan had a great effect on the workings of the National Labor Relations Board?

McCULLOCH: Well, it made it impossible for us to achieve one of the improving objectives which President Kennedy, James Landis, members of the Board, members of the old panel of labor law experts headed by Archibald Cox, and later, the Administrative Conference of the United States all had approved.

But I would say that in this intervening period we made very substantial gains as a result of the other delegation which I mentioned earlier, the delegation to our regional directories in the field of representation cases. We were able to put onto their shoulders the initial decisions in about two thousand cases per year which the Board would otherwise have had to make. These were all subject to review by the Board. But a level of only about, say, four hundred requests for review a year out of those two thousand would be received. So it meant that in about four out of five of those two thousand cases, the regional directors' decisions were accepted as final, and the Board didn't have to deal with those.

A consequence is that our own decisional output of the unfair labor practice cases, where our reorganization plan had failed, was somewhat facilitated, and that production went up very substantially. We were able to take care of the increasing case load just by Board members spending more time on unfair labor practice cases.

If we had had the reorganization plan, we would have been able to do this, and we would have been able to give more intensive consideration to the toughest of those cases. We would have been able to let the routine cases largely be handled by the trial examiners; we would have been able to give oral argument in more cases and let the issues be built up in this kind of way for more careful Board consideration.

**HACKMAN:** Did you ever urge the Kennedy Administration at any later time to submit another reorganization plan?

**McCULLOCH:** No, we felt that the climate in the House had to change somewhat before this would be possible. The '62 elections didn't suggest that this would be very likely. And of course the tragic events in Dallas before there had been a '64 election meant that we didn't come back to the Kennedy Administration for this proposal. It was the political climate that held us back at this point. We didn't want the President to suffer another defeat because we felt if it couldn't win on the second time, it would probably be out for good.

**HACKMAN:** Right.

**McCULLOCH:** And we thought that any President ought to choose his matter of timing for the submission of a reorganization plan on the basis of when he could get a maximum of support. We have in the meantime, however, continued to go to various groups to try to win their approval of it. We've not been markedly successful. The American Bar Association's labor law section has people who want to maximize their opportunities to obstruct, and they've continued to oppose it. But one of the very responsible and most forward looking of the bar associations in the country, the Association of the Bar of the City of New York, has very recently in one of its committees approved this idea. And we are nursing this along in various places and hope to get it to a point in the future where it can have both broad management and labor support. It would then be possible as a "good government" measure for a president to put it forward.

**HACKMAN:** Do you think congressional opinion of the National Labor Relations Board changed considerably during the Kennedy period, after they had realized how the process could be speeded up, for instance, by this delegation?

**MCCULLOCH:** Congress has been so busy with other things that I don't think they've focused on this Board enough to know whether their opinion has changed. In the labor legislation field they have other things like minimum wage and increasing the coverage of minimum wage, unemployment compensation and federalizing the unemployment compensation system, the repeal of section 14-B, beefing up the "national emergency strike" provisions, and all the problems of fair employment practices, and the rest. And I believe they just really haven't thought extensively about our situation.

I would note two exceptions: in the first place, we do have to go up there each year for our appropriations. And in those hearings we have always let the appropriations committees in both the House and the Senate know how this delegation to regional directors has been going. Usually we would try to insert a little something to keep alive the Kennedy reorganization plan idea, saying that delegation has worked so well for the regional directors, we believe the reorganization plan would work well also. And I think the Appropriations Committee members who have focused on it have been impressed by it because not only has it handled the volume of work in representation cases, but it has enabled us to reduce the time for the handling of that volume of work.

When we have a contested case that goes to a hearing after filing an election petition, it used to take about ninety days to go from the filing of the petition to the decision to hold the election. That time has been cut in half, to an average of about forty-five days. This means that in many of those two thousand cases where we have hearings, the time is even less than the forty-five. I think the last figure was forty-two days. So this has been a great gain, and we've boasted about this in our submissions to the Appropriations Committee.

We've also kept the Bureau of the Budget apprised every year. They've been quite curious about this. The Bureau of the Budget's been interested continuously in the possibility of reviving the reorganization plan.

And the final point of more intensive congressional interest is the House Labor Subcommittee under Congressman Frank Thompson, before which we appeared a little more than a year ago. We made very full statements at that time, Mr. [Arnold] Ordman, the General Counsel of the Board and I both, in a morning-long hearing. And in the course of reviewing the operations, the problems, and the accomplishments of our agency, we dwelt upon the success of the delegation to the regional directors and we dwelt upon the need for this delegation to our trial examiners.

**HACKMAN:** Did you have any great degree of trouble getting the appropriations you needed, either in Congress or approval from the Budget Bureau in the Kennedy years?

**MCCULLOCH:** No. I think that they have been very fair with the Board. We got clipped one year in the House--a little discipline for something they didn't like that had happened in the previous year which I could never quite understand. But my budget people told me this was an understandable reaction from the House Committee. The Bureau of the Budget was always very understanding. We have good budget office and budgeting and appropriations group within our own agency, and we have been, I think, sufficiently candid both with the Bureau of the Budget and the Appropriations Committee so that they largely trust our estimates. In a number of years our estimates have been below what the case-load turned out to be, although in every case this is very speculative because we can't determine what the case intake is going to be. Our case-load depends on other people coming in with petitions or charges. We can't initiate cases. But we have a fine relationship, or did have, with the House and Senate Appropriations Committees. We're just hoping that the death of Congressman [John E.] Fogarty and the substitution of new members on the House Committee will not result in a change in that relationship of confidence in each other.

HACKMAN: Now going back to the plan which was put in in 1961 to delegate power to the regional directors, what was the origin of this plan?

McCULLOCH: This came through the legislation of 1959 by specific enactment of Congress. Many years ago the Board, in representation cases, even where there was a dispute as to what the appropriate unit would be. . . . An employer, for instance, was saying, "Well, these people aren't the appropriate unit. It should include certain other classifications of my employees. I won't agree to an election." That's a situation which then would require a hearing. And he'd be given an opportunity to put in the evidence that supported his claim about the appropriate unit. The petitioning union would be able to put in its evidence. But in cases where the request for a hearing or the issue raised didn't seem to be too basic, it had been possible years before for the Board to go to what was called a pre-hearing election. In some of those cases the results in the election itself might be so decisive that the person who thought he had an issue would say, "Well, it isn't worth going to a hearing and fighting it all out." It was clear the employees either didn't want the union or did want it so decisively that the election itself tended to dissipate the need for the hearing. This was then later, in 1947, made impossible.

And when the labor legislation was up for consideration again in 1959, some elements were urging that the Board once again be given authority to hold those pre-hearing elections. Employer groups, in general, didn't like this. They wanted a full opportunity for hearings. And Archibald Cox would have to tell you how this was worked out. I'm sure with the leadership of then Senator Kennedy in the conference between the House and the Senate that the provision that came out finally permitting us to delegate our decisional authority on elections to regional directors was a compromise between those who wanted no change and those who wanted a somewhat more sweeping change.

HACKMAN: How was this decision received by the regional directors in 1961?

McCULLOCH: Well, of course, they welcomed it because it was an indication of the Board's, as well as the Congress' confidence in their ability to make these initial decisions. It enhanced the importance of their function. And they were quite ready to assume this responsibility because we have a lot of men in those positions who are veterans in the service of the National Labor Relations Board, and they had confidence that they could do this work.

HACKMAN: Was the General Counsel at that time, Stuart Rothman I think, agreed with the Board on this delegation?

McCULLOCH: Yes. Yes, there was no opposition from him. I think the holdback in part had been from the same kind of people who were talking about our trial examiners the way they were later. People would say, "Well, we don't know these regional directors very well. They weren't appointed by the President. Some of them are more able than others. We really don't believe you can trust them to make the right decisions." At least former chairman, Boyd Leedom, told me that he had a great deal of pressure from practitioners, urging the Board not to exercise the authority that Congress had given to the Board because of an alleged distrust of our regional directors. This has washed out, and the bar, almost without exception today, says that that delegation has worked very well, and they're pleased with the way the regional directors have handled this authority.

HACKMAN: Did you get a great deal of reaction by interest groups on either side at the time the decision was made?

McCULLOCH: Not very much. I think it was a foregone conclusion that we would do this, and we were really then beginning to get some pressure because in the House of Representatives they had set up a committee under the chairmanship of Congressman [Roman C.] Pucinski to look into the National Labor Relations Board. And the whole emphasis on the part of some of those Democrats was,

"Why haven't you done this sooner?" And so everybody, I think, knew what was going to happen.

You should know that the National Labor Relations Board in many ways is kind of a goldfish bowl. It's almost impossible to keep anything secret here. For the most part we don't try, although we like to let the parties know what the results are by issuing the decisions to them rather than to have some leaks go out. But I'm sure that the grapevine of information-- if I can mix my metaphors of the grapevine and the goldfish bowl--had carried advance information to nearly everybody that we were going ahead.

**HACKMAN:** Did the Pucinski Committee have any other effect other than backing up this decision, or approving it?

**McCULLOCH:** Well, they made suggestions in a number of areas about the need for cutting down on delays, improving the Board's remedies. And we always kept one eye on what they were doing. We had to make our decisions ourselves. The Pucinski Committee's Report was just the report of a congressional committee; it was not like a new congressional enactment with a presidential signature on it; so that we couldn't give these recommendations the force of law. But we would look at them as various proposals would come down the road in cases presented to the Board for changing either our basic interpretation of a statute or changing our remedies in line with some of the things the Pucinski Committee had recommended.

**HACKMAN:** Did the character of the briefs coming before the Board change any because of this delegation of authority to the regional directors?

**McCULLOCH:** Well, of course, it's hard for me to know because I didn't see very many in the few months that I was here to be able to contrast those with the ones that came at a later time. I think the answer would be no from anybody who had seen both of them. They write as long and as persuasive briefs as they can on whatever the issue is.

Of course, in this respect there is a further qualification. The requests for review of regional director's decisions, as to which we set up fairly detailed rules, are supposed to be self-contained documents which contain in them record references and record quotations, as well as the citations of authority which would justify the Board in reversing the regional director and reaching a different conclusion. These are aimed at being very, very brief, not being long legal dissertations. If we grant review, they have an opportunity to file fuller briefs. But since we deny review in most of those four hundred cases where it's requested, you could certainly say that the requests for review on the basis of which we act are shorter, briefer, and less complex than the briefs might otherwise have been in a full trial of a case.

**HACKMAN:** Could you explain why the case by case method was adopted rather than the older per se method of treating the cases?

**MCCULLOCH:** Well, of course, the per se method was a case by case method, too, except the Board said that on the basis of certain factors which it would

line out, it would always find, perhaps, a hiring hall to be an unlawful hiring hall. The Supreme Court said, "well, there can be cases where those factors are all present, and yet the proof of the unlawful and discriminatory character isn't adequate. So that the Supreme Court's rulings really pushed the Board away from this kind of mechanical designation of three or four tests and then saying that our decision and our result will follow. That's a kind of a slot machine technique. You put in certain nickels and the Hershey almond bar comes out with almonds or without almonds as you choose. And the Supreme Court said we couldn't be that mechanical in our handling of the issues, that we had to go to the variant fact patterns in each case and go to the guts of what it was that Congress was shooting at in the unfair labor practice sections of the statute.

On the other hand, there are some situations where the court will permit a finding of unlawful motivation based only on evidence of conduct inherently discriminatory or destructive of employee rights, and not justifying a sufficient business purpose. For instance, in the Erie Resistor [Corporation] case, where, during a strike, an employer offers super-seniority to employees who may come in through the picket line or to strikers who will return and desert the strike, twenty years super-seniority, this seemed to the Board, without specific proof or subjective intent, to be conclusive evidence of the unlawful motive to discriminate against employees because they were exercising the right to strike and such a continuing discouragement of union membership or concerted employee action that you could almost say that in clear and tough factual situations like that we're reaching a per se result. This had to go all the way to the Supreme Court. And the Supreme Court affirmed the Board's ruling in that Erie Resistor case, finding that a grant of super-seniority to returning strikers or to replacements for strikers was so clearly damaging to the right to strike, the people who were exercising lawful statutory rights to strike, that it was an unfair labor practice on the part of the employer. And there was a large back pay liability involved in that case, and it took about three to four years to litigate.

**HACKMAN:** Would you say Supreme Court rulings were of great importance to any change of direction in the National Labor Relations Board that took place in this period?

**MCCULLOCH:** Of course. The Board had been reversed in one of the years before I got here in five out of six cases that went to the Supreme Court. And in the year that I think overlapped my first year here, in about five and a half out of nine of the cases. We on the present Board have been reversed by the Supreme Court, too-- in some cases; not nearly as many. But that two year period, with five out of six reversals and six out of nine, was a considerable setback. And we did have to review a lot of the things that we were doing in light of those reversals.

HACKMAN: I seem to recall that in your first year you almost reversed the percentage and turned it around to nine to five.

MCCULLOCH: Well, that is true. Now our record is rather better although we lost the lockout cases a couple of years ago, and we had the Metropolitan Life Insurance case sent back for re-articulation. We can't quite say we lost that because when the Board finally issued its decision on the remand, the company accepted the Board's decision, and collective bargaining has been initiated in twenty or thirty Metropolitan Life cases as a result of the new decision reaching the same result after the Supreme Court remanded it to us. We've had some cases where the Supreme Court has gone further than we in upholding union rights--Tree Fruits is one such case where we found the union activity to be unlawful in carrying out certain picketing, a boycott aimed at a struck product.

HACKMAN: Where did most of the criticism of the National Labor Relations Board in the Kennedy years come from?

MCCULLOCH: It came from the employer side. We reversed a number of lines of prior Board doctrine. In two or three cases on reconsideration, we reversed decisions that the old Board had made. I never publicly said that the "lame duck" Board handed down certain decisions, but indeed they did hand down some decisions a few weeks before I came to the Board when they knew there would be a change in the composition of the Board.

One of them was a General Motors case involving the agency shop. Another one was a case called Fibreboard [Paper Products Corp] involving the obligation of the employer to bargain about subcontracting which results in employees of the unit represented by a union losing their jobs. In both of those cases the Republican General Counsel asked the Board to reconsider because he thought that the former Board's decision was wrong. We thought the former Board's decision was wrong also, the decisions in both of those cases, and we did reconsider. And of course both of those cases went to the Supreme Court. And the Board was affirmed by unanimous decisions of the Supreme Court in both of those

There were some organizational picketing cases, too, interpreting the rather complex new picketing provisions that were adopted in 1959. And the Board felt that a compromise worked out by Senator Kennedy with the assistance of his able staff, and Archibald Cox who was on that staff, had not been given the proper interpretation. Indeed, Archibald Cox's own writings, in law review articles and elsewhere, indicated a very different view of that picketing section of the statute. And so once again, on the motion to reconsider, we did consider the interpretation of the picketing section of the statute, particularly the informational picketing provision to Section 8(b)(7)(c). And we issued different decisions, the doctrine of which has been held by all the courts of appeal that have ruled upon it.

**HACKMAN:** Do you think the Board was in a sort of a transition process as far as interpreting the 1959 Act when you came to the Board or was . . .

**MCCULLOCH:** That's true. That's quite true. It was still new enough. There hadn't been very many court interpretations of it. Where you get legislation that's a little complex and, as Professor Cox and others have said, the result of conflict and compromise, the meanings are not always clear, and they have to be handed down in litigation. We were in the midst of that process, the Board before I came and the Board after I came.

Indeed the interpretations of some of these sections are still being ironed out. We got two decisions just within the last ten days or two weeks from the Supreme Court with reference to the meaning of Section 8E, the "hot cargo" section of the statute, and its application to contract provisions by which unions have sought to protect the work of their members who are employed on a building project. They were the National Woodwork Manufacturers Association and the Houston Insulation Contractors Association cases. And to show you how difficult the problem is, the Supreme Court divided five to four on both of these two cases. The Supreme Court's decision in each of them affirmed the Board's interpretation of the Act. Here it is eight years almost--seven and a half years after the enactment of the statute where certain phases of that provision are just now reaching the Supreme Court. And this is just certain phases of it.

There are other aspects of Section 8E which, of course, the Supreme Court hasn't yet ruled upon, but which the courts of appeals have largely ruled upon by this time.

HACKMAN: Did you have any personal contacts with the President or his staff during the Kennedy Administration after you came to the National Labor Relations Board?

McCULLOCH: I, of course, had contacts with his staff. They were always good enough to consult me in connection with the President's action on reappointment of my colleagues and the selection of the man to be the General Counsel when Mr. [Stuart] Rothman's term ran out. On cases we had almost no contact because the White House was very careful not to seem to put any pressure on the Board.

I suppose we had a few status inquiries from the White House when they would get inquiries and they'd want to know, "Well, where is this case and what's the prospect of its coming out?" And I can only at the moment recall one kind of status inquiry on something where, I believe, some relations with foreign nations were involved, and the President had a specific question and called me just to ask me what the picture was as I saw it. But for the moment I can't quite identify it, whether it had to do with Panama, or whether it had to do with Canada and the foreign flag ships . . .

HACKMAN: Foreign flags ships.

McCULLOCH: . . . but my recollection is that it's a little more likely to have been the latter about which he was inquiring. I believe it was on the occasion of a visit from the Canadian Prime Minister, and the President was expecting some questions about picketing of Canadian ships in U.S. lake ports.

For the most part, however, he depended upon the Department of Labor for his information. And I had more inquiries from the Department of Labor, the Mediation and Conciliation Service, and from the Department of Justice when we would have overlapping matters in which we had cases that were currently pending and in which any one of those agencies had

other matters pending before them.

HACKMAN: Do you recall any serious problems in working with any of the other agencies that you had?

MCCULLOCH: No, no. It was a very fine relationship. Secretary [Arthur J.] Goldberg, while he was at the Department of Labor, was not only a good personal friend, but a person who knew the workings of this agency so well that we meshed very easily. And of course the same was precisely true of Secretary Wirtz. And the agents of the Attorney General were always quite knowing about what we were doing. If it was something that wasn't as much within their knowledge and experience, our quick reports on the status of matters were quickly understood.

HACKMAN: Were there ever any considered or proposed appointments that you disapproved of and ruled out?

MCCULLOCH: No. I had quite frank talks with Ralph Dungan about various people, but it never got to the point of that. And indeed I think Ralph recognized, as I would recognize, that the chairman of the Labor Board does not have and shouldn't have veto power anyway.

HACKMAN: Right.

MCCULLOCH: So the question was never put to me in that way, and I never felt it was my proper prerogative. Oh, I suppose that if some terrible person had been proposed, I would have said, "Oh, you mustn't do this." But I never conceived that it was my right to have a veto power.

HACKMAN: How did the appointments of Gerald Brown and later Howard Jenkins, Jr., change the character of the Board, or did they considerably?

McCULLOCH: Well, Gerald Brown was appointed very soon after I was. Member [Joseph A.] Jenkins resigned and was made regional director in the Southwest.

And the selection of Mr. Brown was made before I knew who he was or what he was about. He was a very, very good selection. I'm sure I was told shortly after the determination had been made by someone in the President's entourage, but I can't recall the precise first moment when I was told. And when I was told, the reports that accompanied this information were all so good that there was no question about my being delighted with his appointment. He was a veteran in the work of the National Labor Relations Board and regional director in San Francisco, a man of great competence and with more practical experience than any of the rest of us at the Board had had. In my view he's a very fine appointment because he brought to the Board an experience that no one else had, a knowledge of the way in which the regional offices work, the way they thought. And the fact that he was a non-lawyer was an advantage too because it meant that the practicalities of industrial relations--where they're being lived by unions and by employers--that these practicalities would get laid on the table by Mr. Brown.

The Jenkins appointment was a very different thing. Jenkins' background was that of a practitioner and a professor, and a very smart and a very able one. He came immediately, of course, out of the Department of Labor where he'd been administering other statutes. But he had taught labor law and knew a great deal about our statute, as well as having practiced it before he became a professor. And so he brought very fine intellectual equipment, experience, and knowledge of our statute; of course he didn't bring the same kind of practical experience of day to day labor-management relations under our statute that Brown did.

HACKMAN: Did you ever feel that lack of practical experience on the part of the Board as a whole made any difference?

MCCULLOCH: Well, of course we're farther and farther away from where the parties are who are engaged in all of this than say our regional directors. But the difference that it makes is counterbalanced by the fact that we have to handle so many cases. And after you get hundreds of these cases and are doing nothing else but handling them, you get a little more familiarity. And then we are also greatly aided by having one of the ablest staffs in the government. Our legal staffs are generally top labor lawyers. We have some of the cream of the crop in the government. The Justice Department and Attorney General [Robert F.] Kennedy and some of their people told me that the National Labor Relations Board's briefs are quite consistently the best briefs that they get from any agency in the government. I'm blowing our horn a little bit, but I'm not patting myself on the back, I'm patting on the back the people who were here before I ever came here.

And I had the help of Arnold Ordman, who was appointed by President Kennedy later to be General Counsel. I had his help as my own chief counsel. I now have the help of one of the ablest trial examiners in all of government, Arthur Leff, as my chief counsel. This means that those of us who may not have the practical experience you talked about are greatly assisted by men who have looked at the law and the cases for fifteen to twenty or twenty-five years.

HACKMAN: This kind of a question is in a different direction, but at the time that Secretary [Arthur] Goldberg left the Labor Department there was some speculation that you might be named Secretary. Was there anything to that?

MCCULLOCH: No, I'm sure there wasn't. I've never had any aspirations in this direction, and this speculation must have been by people who had nothing better to do. I have no hard evidence that anybody gave this any very serious thought. The Under-Secretary, Mr. Wirtz, is such an outstanding person, he's such an eloquent spokesman, as well as an able legal analyst, and his own public stature is such that you couldn't fault the President for choosing him. I've always told him that I thought that he should have been made the chairman of the Board, and then perhaps that would not have been my job. But the White

House understandably had greater responsibilities in mind for him.

HACKMAN: I think we're about to run out of tape on this side.

BEGIN SIDE II TAPE I

HACKMAN: Mr. McCulloch, it's frequently been pointed out by various people that the 1947 changes in the original labor law and the administrative setup that resulted would of necessity lead to problems in the relationships between the Board and the General Counsel. Was this ever a problem in your period at the National Labor Relations Board, or what type problems came up?

MCCULLOCH: No, I think this has really been hammered out just by the process of time. Mr. Rothman, the General Counsel when I came here, was always quite cooperative and certainly didn't try to raise issues where there would be a conflict with the Board. In the course of time, we on the Board--and I'm speaking about the Board as an institution before I ever got here--have delegated even more authority to the General Counsel than the statute gives the General Counsel. We, for instance, delegated to the General Counsel the handling of the litigation for the enforcement of our decisions.

HACKMAN: Right.

MCCULLOCH: So the statute makes him the prosecutor and investigator before the cases ever come to the Board level, and we have made him our attorney to handle the cases in the courts of appeals and in the Supreme Court after we have decided them. And the Board wouldn't have done this prior to my being here and wouldn't have maintained this delegation of authority to the General Counsel to handle this enforcement litigation unless it had great confidence in the General Counsel.

I think the General Counsels themselves have also played it straight with the Board and have not exercised their unreviewable authority to issue complaints in a way that would run counter to the interpretations of the law handed down by the Board and by the courts. The General Counsel might say, "My authority to issue complaints is unreviewable. I'm just not going to issue a lot of complaints in these cases even though these investigators have found reason to believe that there was a violation." My own private belief is that even though we say that their authority is unreviewable, perhaps it could be reviewed if it showed an abuse of their discretion in something that was just so obviously wrong. If a man could find a way of getting into court to say this is so clearly arbitrary or an abuse of the power . . .

HACKMAN: Right.

MCCULLOCH: . . . to refuse to issue a complaint, they could possibly get at him. But the general counsels have not, during my period here, attempted to skirt that area.

Now, since the Board, in line with the legislation we talked about before, has delegated decisional authority in representation cases to the regional directors, those regional directors are now agents of the Board to a greater degree than they were before. This means that a regional director who is making a decision in a representation case that's going to be reviewed by us is doing this as a delegate of our authority. It means that same regional director, when he's handling an unfair labor practice case, however, is issuing the complaint as a delegate of the General Counsel. So the regional directors wear two hats.

And, in the selection of men for those positions, the General Counsels since I've been here, have always recognized that the Board had to be agreeable to it. They didn't take the express statutory authority to run the regional offices and say, "Now this gives us the right solely to name who these people should be." This has worked out very well. We've had a little negotiation at times over the individuals to be selected for some of the offices. But these were frank discussions, that any six men would have, pooling their information in reaching a decision that they thought would be to the benefit of the agency.

Since Mr. Rothman is gone, Mr. Ordman has worked even more closely with us in the sense of being attuned to what we're doing. He had a long service with the agency. He puts it in these words, as I recall it, "Each of us, the Board and the General Counsel, has a separate statutory authority, but we're administering the same statute." He has administered the offices with a somewhat gentler and less authoritarian hand than Mr. Rothman did. I believe that this has evoked a little more of an enlistment of staff in the cause of the statute.

Mr. Rothman, in his time, may have been needed with a little heavier hand because perhaps we had gotten a little slack. We'd certainly built up great backlogs, and Mr. Rothman's work was a real contribution to getting rid of a lot of those pending cases, bringing us much more up to date in the regional offices. But Mr. Ordman has kept that same good record without quite the same tough procedure.

**HACKMAN:** Did you ever face congressional pressure of any kind for appointments to various positions within the Board, within the agency?

**McCULLOCH:** Well, you always get some letters saying, "So-and-so would like a job with the Board and I hope you will consider him." Summer interns, I probably have had a dozen letters from senators and members of Congress about filling two little spots for summer interns. So this is normal; they're responding to constituents who want their backing.

In some cases you'll find a labor union or employer group will go to a senator if they have found a man whom they want to have appointed or don't want to have appointed. Then we have to deal with that as delicately as we can. The decisions have to be ours, but where all other things are equal and a man from a state where you're going to appoint a regional director has a strongly held view and you find the man is a very qualified man, why, what can be happier than to appoint a qualified person who happens also to have been endorsed by a member of Congress?

HACKMAN: Going back to something we talked about earlier-- budgets--do you recall in 1961 you went back to Congress, I believe, with a second budget request because the original Eisenhower request was not large enough. How was that decision made? Was that a Bureau of the Budget decision or a re-evaluation here on your part?

MCCULLOCH: Both, We had to look at our case load and see whether we were going to run short. And when we were convinced that we were, we had to get the Bureau of the Budget's approval to be going in with a supplemental request. And they were very cooperative when we showed them the figures.

HACKMAN: As far as the substantive polices of the Board, when you came to the National Labor Relations Board, did you have clear ideas in your own mind on a number of substantive issues that you thought should be changed or that rulings were going in the wrong direction on?

MCCULLOCH: No, I don't believe I had had an opportunity to focus gun sights to this degree. I knew from the expressions of some persons that they felt there were such issues lurking around, and they were going to be coming up in some of the cases; we already knew of the General Motors agency shop case, but the Fibreboard case I don't think I was even aware of when I was appointed. I knew, however, that there were kinds of things like these that would be likely to come up. And I can't remember if my inaugural speech was seven minutes or ten minutes or whatever it was, but it made some comment, as I recall it, on the fact that in the light of court decisions reviewing the Board's work, in the light of changing conditions, we had to be willing to look at some of these issues afresh in order to capture the purposes of the Congress, the basic and fundamental purposes of the statutes. So I did come in kind of saying that we've got to be ready for change without having committed myself to any specific changes.

HACKMAN: Did you ever feel that the Board was reflective of an overall, Administration-wide policy toward labor management relations, or did this enter into any of your thoughts concerning specific matters?

MCCULLOCH: Certainly the Secretary of Labor and the agents of the President in the Bureau of the Budget and his own personal staff never gave me any impression of a labor policy that they hoped I would carry out. This includes Mr. Landis' role. He wanted the administrative process to work. The President wanted the administrative process to work, and he wanted the delays to be cut down. But in terms of the substantive decisions about which you asked, there was never anything put to me by any person that would suggest they were asking me to decide an issue one way or the other.

Now, I should supplement that. I've made some speeches in which I say that the scheme of the statute permits the President to appoint one man each year; if two vacancies exist, as in the year when I was appointed, the Brown appointment and my own came in the same year, but the scheme of it is one man a year. Unless Congress had expected that it would be within the power of the President to choose somebody rather than somebody else, they would have had us appointed for life terms. I've said publicly that I felt Congress, in adopting that kind of a plan, at least permitted the President to select a person whose general viewpoint he thought might be a little more in one direction than in another. And when I said that, the Chamber of Commerce turned it around and said, "Chairman McCulloch suggests that the Labor Board should be amenable to the leading political power of the time." Now, there is a crass statement which doesn't reflect what I'm trying to talk about, which is, that an administrative agency which renews itself by presidential reappointments, to a certain degree can be affected by the President choosing a man with one outlook rather than a man with another outlook.

HACKMAN: Do you recall that your own ideas shifted significantly in the Kennedy period on the matters before the Board?

McCULLOCH: Well, obviously they matured. I developed a better focus, and I learned a great deal more about the law. I'm afraid I had to do a good deal of learning on the job. The only guarantee the President had when he appointed me was that he saw me running around the Senate and he felt I had enough brains to handle these issues. He knew my general outlook. And my identification with Senator Douglas, with whom he had worked together on a lot of labor legislation, probably was some warranty to him that my interpretation of the statute would be one with which in general, he would be satisfied.

HACKMAN: Looking back, do you think you were satisfied with the performance of the Board those first few years during the Kennedy Administration?

McCULLOCH: Well, do I think that I was?

HACKMAN: Yes.

McCULLOCH: Or that he was?

HACKMAN: That you were?

McCULLOCH: Yes. We always think that, as we look back, we might have improved a little here or improved a little there in some of the things that we did. But I think we made intelligent, practical applications of the laws, and our interpretation of the dubious provisions were conscientiously made. Even when we had dissents, I found in my colleagues a very high degree of integrity in trying to reach the result that they felt was intended by Congress, but with an eye to the statutory purposes of protecting self-organization, protecting collective bargaining. I think that we made advances on these lines and that our interpretations, where they reversed past Board doctrine, were more in line with the basic purposes of the statute.

There are people who concede that on the labor side. A lot of management people have difficulty conceding this publicly because it isn't popular to do so. But I would say, for your record, that one of the men who was closest to Senator [Robert A.] Taft was seated in this office one day-- in fact he was one of the men that helped Senator Taft write the Taft-Hartley Act--he said to me, "Frank, if I had been on the Board and decided the Fibreboard case, the General Electric case (which is another controversial one I haven't mentioned here), and the Darlington case (which at the time he was talking to me was very controversial), I would have decided every one of them just as the Board did." This is a respected management attorney who has some very well-heeled clients, who will say that privately. He said, "Of course, if you ever say that publicly, I would have to deny it." We get other testimony of this sort from fair-minded management counsel.

The course of the decisions has been somewhat more favorable to the basic purposes of the statute. And since the statute protects employee organization and collective bargaining, it means it's a bit more favorable to unions which are formed for those objectives, as well as the purposes of the statute.

But we have also hit the unions hard where they violated the statute. We've gone farther in pushing the secondary boycott laws and some of the "hot cargo" provisions of the statute than some of the courts of appeals would let us go. So we have not withheld the enforcement of the statute against the unions where they have been the violators. Indeed, where the unions as employers of business agents and others have resisted the unionization of their own employees, and here I mention David Dubinsky and the ILGWU [International Ladies Garment Workers Union], we've called the tune in the same way, and we've decided against them in the cases where they didn't like it very well either. We've just recently had one decision affirmed, or certiorari denied in the Supreme Court, involving the Retail Clerks International [Association].

I think we have made real gains in the administration of the statute, moving it in the right direction, moving it more swiftly. And I believe that most fair-minded commentators would say the same thing. But now I'm just blowing my own horn.

HACKMAN: That's perfectly justifiable. Let's go back now and talk a little bit about your Senate career and President Kennedy's Senate career. Do you have any recollections of the first time you might have met Senator Kennedy or when you first got to know him?

McCULLOCH: I'm not too good on the personal recollections because my contacts with him were very, very few and might be very fleeting on the floor of the Senate or when I might be seated in one of his offices talking to Ted Sorensen or Mike Feldman, and in instances like that. I can't recall vividly the first such occasion.

HACKMAN: Did you work closely with Kennedy or his staff on labor legislation after Senator Douglas left the Labor Committee?

McCULLOCH: No.

HACKMAN: Did you play any role in the development of the 1959 legislation that became Landrum-Griffin?

McCULLOCH: Only as we tried to lend a helping hand where we could in what Senator Kennedy was doing. I have a very full notebook on the various amendments to that statute. I tried to keep abreast of it, and I worked with staff people who were advising Senator Kennedy, not so much with Archie Cox as with [Samuel V.] Sam Merrick and some of the other members of the staff who were working with the Senator. But Senator Douglas, being off the committee and being terribly taken up with a lot of other things himself, didn't enter into the debate very frequently. I'd have to look back at the Congressional Record to see whether he spoke at all.

HACKMAN: Do you have any comment on how deep Senator Kennedy's understanding of labor issues was, as compared to other senators?

**MCCULLOCH:** Well, one can only say that he seemed to exhibit a certain virtuoso talent in the handling of a terribly complex lot of amendments. Senator McClellan, Senator Curtis and others were putting forth amendment after amendment that would have taxed the understanding of the greatest labor lawyer in the country to understand all of the implications. And of course Senator Kennedy had the assistance of one of the ablest labor lawyers, Archie Cox. But he grasped these things very quickly. My own impression was of one of the quickest minds and the greatest capacities to understand an issue that I have ever seen. Senator [Hubert H.] Humphrey has something of this himself. I remember sessions on tax legislation where he, too, with a few experts around, would get to the heart of the matter so quickly and take that out of the counsel that he was getting. So that Senator Kennedy's was really, both in himself and in his capacity to use the capacities of others, a very, very great talent.

**HACKMAN:** Do you recall that key vote on the McClellan Bill of Rights when Kennedy lost by one, and I believe Douglas and Humphrey were out of the Senate? Do you remember playing any role in that, in trying to get Senator Douglas back or anything like that?

**MCCULLOCH:** Yes. He was up in Canada trying to get the Prime Minister to give a little more help to Chicago in connection with its diversion of water from Lake Michigan and all the other lakes. Some of the Canadians were sure that Chicago was taking so much water out that the boats from Canada weren't going to be able to get into docks. This was important to Chicago both because of its water supply and sewage disposal, and a lot of other reasons which I won't go into. This thing had been worked on for years and years, literally, and it was just at the point where he thought there was a chance of getting the head of the Canadian government to make some concessions that would finally make possibly the resolution of this. This meeting, this conference which had been set up for a particular time happened to come at the precise time that this vote occurred.

I'm sure I was oscillating between the floor and the telephone in trying to get the Democratic leadership to see what it could do to delay the taking of the vote. And then this finally didn't work. The Senator himself, upon being apprised of the taking of the vote, as I recall it, hired a special plane to return to Washington because the commercial lines didn't have a sufficiently direct service. And he shelled a good deal of money out of his pocket for this plane, special plane charter, as I recall it. But he still got back too late to cast his vote on the issue. But he was mindful of Senator Kennedy's leadership, and he was terribly regretful that he hadn't been there for the vote. But this was a failure of everybody's ability to predict precisely when it would come. Of course, finally, the result of this shifted when the Southerners who had voted for it realized that maybe they had put something into the statute which might have fair employment practice implications.

**HACKMAN:** Moving to something else, do you recall the vote for censure of Senator [Joseph R.] McCarthy in 1954 and anything involving Senator Kennedy-- efforts to get Senator Kennedy to vote against postponement of this action? I know Senator Douglas was very involved, at the time in wanting to hurry up the censure, or in getting the censure at that time.

**MCCULLOCH:** No. I have no recollection at all of any efforts with respect to Senator Kennedy.

**HACKMAN:** Much the same type of question--do you recall the 1957 civil rights legislation at all and the efforts to get Senator Kennedy not to vote for referring the bill to the [James O.] Eastland Committee or to persuade him to vote against the jury trial?

**MCCULLOCH:** Only a very generalized recollection that of course we were moving every way we could to get the maximum number of votes on both of those issues. But I don't have a specific recollection of anything aimed exclusively at Senator Kennedy and no recollection of contacts with him or his staff. I could have had a number of contacts with, particularly at that time, Mike Feldman on those issues. And I do know that we tried to keep

him advised for Senator Kennedy of all the plans that were going, even when Senator Kennedy might not be in on a small caucus of the people who had taken the leadership in developing the strategy for this effort. So we regarded Senator Kennedy as a real ally, and his departures from the general line that Senator Douglas and Senator [Herbert] Lehman and certain others took don't stick in my mind at all. Whether he did depart or not, I really couldn't be able to tell you.

HACKMAN: Did you play any significant role in the 1956 efforts led by Senator Kennedy against the Mundt-Daniels Electoral Reform Bill? I believe Senator Douglas and Senator Lehman were both very active in this.

MCCULLOCH: My own personal work on this was probably largely the care and feeding of some of the specialists that we had who were working with the Senator on it. There was a very bright woman who was on the faculty at Penn State University, actually a Republican, who was so opposed to this and who had done a good deal of work and writing in this area. And the Senator persuaded her to give some of her professional time to pulling together some of the facts. We had two or three people, and I was only helping to coordinate their efforts. It's my recollection that the Senator made a long, long speech in the Senate on this issue at that time.

HACKMAN: Were some of these people you were working with then the source of some of the statistics and argument that he used to back up his viewpoint?

MCCULLOCH: Yes, yes. That was a pretty good thing. And of course it was the precursor of this one man-one vote goal, which came later. But he really spread out on the Congressional Record, not only in terms of congressional representation but in terms of the representation in the legislatures of each of the states, the over-representation of the rural areas and under-representation of the urban areas. Again, I don't want to boast, but I think the Senator's analysis of this was the fullest evidence submitted in congressional debate and quoted in any congressional report that I can recall up to that time.

- HACKMAN: One more item, did you attend the 1956 Convention, do you recall, in Chicago?
- McCULLOCH: I'm having a hard time sorting out conventions. I was at the '52 Convention, but the '56 one I came out just as it was ending.
- HACKMAN: This was the Convention when Senator [Adlai E.] Stevenson threw the vice presidency open to the Convention, and I wondered about any role you or Senator Douglas would have played in the Kennedy efforts to get the vice presidency.
- McCULLOCH: Really, none. So I can't help you as to that. I have a recollection of seeing [Eugene J.] Gene McCarthy the morning after this took place because I believe Senator Humphrey was another one of the aspirants at the time. I believe that Senator McCarthy was Senator Humphrey's floor leader, and we got the spillover from him the morning after this decision was made?
- HACKMAN: Do you have any overall conclusions as to President Kennedy's career or your own role in the Administration that you'd like to add?
- McCULLOCH: Oh, I don't think this is the time for me to pay tribute to the elan and the spirit, the forward looking quality, the vigor, the youth, the sense of enlistment in the future that he communicated to everybody. This is said much more eloquently by others. I do think in my own agency I can report that there was a strong reaction to this and that the sense of direction of the New Frontier and all was communicated to us by the President, by his own eloquence, by the example of his own dedication to goals that were very important. I'm speaking here not for myself personally, although I would hope that I responded to this, too. I know that many people did so in the lower ranks of government, and this helped to give a new boost, a new sense of importance, to the public mission a lot of people were carrying out. This was a very real thing in the lives of the persons, and in the long run this helps the contribution a government can make to its citizens.

My own role here, other people would have to comment on. I've already patted the Board on the back while I was here. And I didn't really mean that to be so much a reflection of my role as it is the role of others who are here. I suppose I'm just a kind of a broker, one who helps to release some of these insights, release some of these energies, and helps to put together the forces that are not only latent, but very, very real and present here.

We've done one other thing--this again isn't speaking of myself at the moment--we have made a more studied effort to go to the various groups with an interpretation of what the Board was doing and more of a studied effort to cut down on some of the misunderstandings. And with careful nurturing we've made some apparent gains with the National Association of Manufacturers; we've made almost no gains with the Chamber of Commerce; we've made very real gains with the American Bar Association labor law section which had reached a point of very frosty relations with the National Labor Relations Board in 1961. And I think we have maintained and considerably improved relations with the labor community, although there are union leaders who are disappointed with some of our decisions and with some of the delays. But by and large we've met with them in frank conferences where they've taken down their hair and we've taken down our hair, not on specific decisions but on the general outreach and the general approach of the Board, given them a chance to get their gripes off their chest, explained to them a little bit more fully what we are doing.

There is among my colleagues a constant willingness to be critical of our own operation, to try to seek out ways, new ways and better ways of doing things. This may be in part because we're in such a highly controversial area, with people shooting at us from both sides all the time; so we have to do a bit of hopping to dodge their bullets and make sure that when they ricochet, they don't hurt us. But I don't find a kind of atrophied approach or feeling of, "Gee, the work is so tough. Why don't they leave us alone and let us handle the cases the way we've always been handling them?" There is, on the contrary, a kind of feeling of, "Well, there are new things being brought up all the time; there may be a new way; there may be a better way. Let's look at it. We're not sure that it's better, but let's give it very careful

study." This is a good spirit to have in an agency, and to be chairman of it means that you get a lot of credit for the things that a lot of other people do. And I find that the dynamism here and spirit here is very heartwarming. Of course there are some people on the Hill who want to abolish us and substitute a labor court and take some of our jurisdiction and transfer it to the U.S. District Courts. But this has been true for many, many years. And we say, "Ho-hum," go about our business, and try to do it better as we go.

HACKMAN: Do you think these efforts to go to the groups, was that started in the Kennedy period?

MCCULLOCH: Yes. We just felt that this was an important part of the interpretation of the Board, and we haven't done as good a job of this as we should have. We don't have a big public relations office; we have a little information division with three fellows who are kept busy just reporting the Board's cases. And they have the clerical, secretarial staff that you need to support that operation, the press releases and the like.

What we need to do, and every administration needs to do, and the Labor Department needs to do is a better job of interpreting what our law is about, trying to reduce the opposition to the law that I mentioned when I was talking about why the reorganization plan had been defeated. Thirty years, thirty-two years after the enactment of the statute there is still too much resistance to the law. We all need to find ways to win compliance and voluntary acceptance of the purposes of the statute on the part of the diehards, get them to march alongside a lot of the very forward-looking managers and lawyers who accepted the law years ago and have been making this collective bargaining thing work. This is easy to say but obviously more difficult to achieve today, when you may be a week or ten days away from new legislation which would amount to compulsory arbitration and government seizure of the railroads; they have to work out a means of settling their disputes. The fact that we have some failures doesn't indicate that the system is suspect; it indicates that if some people haven't learned to make a reasonable use of that system, they may push the Congress into restricting

freedoms of bargaining, which the Congress doesn't want, the President doesn't want, and Kennedy wouldn't have wanted had he still been here. When somebody learns how to make everybody reasonable, a lot of things are going to be decided without legal compulsions.

HACKMAN:       Okay, thank you very much.

*Reference copy 1*