

Harold Reis Oral History Interview – RFK#2, 11/11/1975
Administrative Information

Creator: Harold Reis
Interviewer: Robert W. Greene
Date of Interview: November 11, 1975
Place of Interview: Washington, D.C.
Length: 17 pages

Biographical Note

Reis, attorney, Office of Legal Counsel, Department of Justice (1961 - 1965), discusses disagreements between J. Edgar Hoover and RFK and controversies over wire-taps, among other issues.

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Harold Reis, recorded interview by Roberta W. Green, November 11, 1975, (page number), Robert F. Kennedy Library Oral History Program.

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File Location:
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Oral History Interview

Of

Harold Reis

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Harold Reis – RFK #2

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Second Oral History Interview

with

HAROLD REIS

November 11, 1975
Washington, D.C.

By Roberta W. Greene

For the Robert F. Kennedy Oral History Program
of the Kennedy Library

REIS: ...on this whole wire tapping business....

GREENE: What do you mean by that?

REIS: I just remember very little.

GREENE: I found it a very complicated subject, and....

REIS: Joe Dolan [Joseph F. Dolan] once said to me—Joe Dolan's obscure now—he said, "With respect to wire tapping we were very much like the Germans. We didn't know what was going on."

GREENE: Yes. In fact, I'd really like you to expand on that a bit. I was going to ask you that at the end, just what your feelings are about that whole thing, unless it's really the same impressions. Why don't I begin by asking you, at what point in the planning of wire tap legislation in 1961 does the Legal Counsel's office [United States Department of Justice Office of Legal Counsel] get involved?

REIS: I really don't know. I was involved in it probably before '61, before the Kennedy [John F. Kennedy] Administration. I remember working with some of the stuff, I think before the Kennedy Administration came in. I think there was a Republican administration wire tap bill.

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GREENE: Well, I think, my impression is that the '61 bill is, to a great extent, a carry-over from Eisenhower [Dwight D. Eisenhower] Administration.

REIS: The basic drafting was done in the Criminal Division [United States Department of Justice Criminal Division], and I guess the basic drafting was done by a guy named Harold Koffsky [Harold Kofsky]. Thereafter, sometime along the way, a guy named Jim Morrison [James L. Morrisson], who worked in the Office of Legal Counsel, and I, got into it. Could you turn off that recorder a minute?

GREENE: Sure.

REIS: [Interruption] You were asking about who worked on that....

GREENE: Yes. When the '61 bill last came over to the Legal Counsel's office....

REIS: The basic work was first done in the Criminal Division, and I think I said by a fellow named Harold Koffsky. Thereafter, I was then first assistant in the Office of Legal Counsel, and I worked on it with one of the lawyers there named Jim Morrison.

GREENE: He would have picked it up after the Eisenhower

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Administration, because he didn't come on until the Kennedy Administration.

REIS: That's right. No.

GREENE: How much work was actually done on this bill in '61 before it was sent over to the committee? Were there many changes made, and what was the nature of them?

REIS: It's hard for me to...I just can't recall. I assume that there was a lot of changes, but a lot of changes can be a lot of fiddling. I don't remember whether there were any big changes.

GREENE: You don't remember any discussion either you sat in on, or perhaps were reported to you by Mr. Katzenbach [Nicholas deB. Katzenbach]?

REIS: No, I really don't. The only thing I do remember is, Morrison [James L. Morrisson] and I concocted a provision, I believe it was in '61 legislation, which said nothing in the act is to be construed as depriving the President of any constitutional authority that he may have, which was the.... We always considered that, kind of a CIA [Central Intelligence Agency] provision. I don't remember whether we discussed that with Mr. Kennedy [Robert F. Kennedy], for example, or even for that matter, I don't remember if we discussed it with Mr. Rogers [William P. Rogers].

GREENE: So it was just on your own initiative, really.

REIS: Well, I suspect it wasn't on our own initiative. We were vaguely aware that there was a CIA problem, and that people were doing things overseas that we didn't want affected by the legislation.

GREENE: This is sort of a procedural question but, how could you tell if Robert Kennedy, or any Attorney General, I guess, was personally interested in a piece of legislation, as in this instance? What was the difference in the way the legislation was handled in the Office of Legal Counsel? When it was routine, and when it was policy for the Attorney General's office? Is there some generalization you can make on that?

REIS: Well, I think you're under a misapprehension. The Office of Legal Counsel was not the Legislative office [United States Department of Justice Office of Legislative Affairs]. It was the Deputy Attorney General's office that was the Legislative office. What you call routine legislation which might, say, be appropriations

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legislation, or legislation on which we were routinely asked to comment by committees, was all handled out of the Deputy Attorney General's office. To the extent that we got into legislation, at all, it was ordinarily because the Attorney General asked us to.

GREENE: Well, that really answers it. [Interruption] In late '61 when it became apparent that the Department was shifting into its position on wire tapping legislation, the press was inquiring why, I believe it was Ed Guthman [Edwin O. Guthman] issued a statement, or at least told, again I think it was Tony Lewis [Anthony Lewis], that the Department.... [Interruption] When they were asked why they had changed their position, they claimed that the Department's new leadership simply hadn't had enough time for deep discussion over the extremely difficult problem before it had to take a position, which gave the impression that there was pressure on them to act on this more quickly than they might otherwise have done. Do you remember that being the situation?

REIS: No.

GREENE: No. It was kind of an excuse?

REIS: Yes. You're asking about my memory. My impression is that Kennedy's attitude toward wire tapping evolved, and I don't think it evolved very far, frankly.

GREENE: How clear of an impression did you have at that point, or do you remember having at that point, of just what he wanted, what he had in mind, and how much was kind of going with what you had, unless you had word that that was not acceptable?

REIS: I don't have a clear impression. I think almost anything I would say is misleading, because I don't really recall discussing this stuff with him directly.

GREENE: Or through Katzenbach?

REIS: Well, that's the point. I don't have a clear memory of what orders I got.

GREENE: Okay. Do you remember much concern in your office about the constitutionality of this type of legislation or particular concern about the right to privacy? Was it a matter of debate at this stage?

REIS: Well, I don't think it was only a matter of

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debate. I must say I took a far more right wing attitude toward it than a lot of other people. In view of some of the....I did not have any reason

to believe there were excesses of type [Unintelligible] I did believe that nobody took it very seriously that judicial control was not too meaningful, that there were better means of controlling it, and that they should be involved, but nobody ever took it seriously.

GREENE: There was no real discussion of it?

REIS: No, not in any administration.

GREENE: What kind of alternatives did you have?

REIS: A full report to a congressional committee, limitations on wire taps in terms of absolute numbers, a complete post audit by some independent agency, that kind of thing.

GREENE: Why do you think they weren't interested? They just didn't share your concerns?

REIS: Well, I think, for one, most people thought about it in terms of a search warrant, and they always thought about judges as being the kind of people who issue search warrants and control things, and keep things from becoming excessive, and that was a good way of doing it. I just never thought it was. It seemed to me that wire tapping was something that should be centrally controlled. You shouldn't be able to go to a favorite judge....

GREENE: When you say that you were more right wing in this, or at least more conservative, can you remember where other people stood on this matter? How much actual debate there really was at that time?

REIS: Well, I can't specify people, but I think that some of the people around Kennedy did not share his views that....There were some that shared a position that he originally too, he felt that wire tapping was a bad thing, and that it should be judicially controlled, and it shouldn't be done with exceptions. I don't know anybody who thought we should never have it.

GREENE: Do you remember Mr. Katzenbach's feelings in '61, or how strong they were?

REIS: I honestly don't.

GREENE: Anyway, in September of '61 the Senate Subcommittee on Constitutional Rights rejected the

unconditional authority for state wire tapping. [Interruption] And it approved a restrictive bill in December of '61.

REIS: Who was the chairman of that, Long [Edward Vaughn Long]?

GREENE: Yes.

REIS: Okay.

GREENE: Do you remember whether this was expected?

REIS: Yes.

GREENE: Yes.

REIS: I have a vague feeling that it was expected, that we didn't expect to get any place with it.

GREENE: I have a list of the subcommittee's recommended restrictions, some of which were adopted more or less in the '62 bill. Do you remember using that as some kind of guideline?

REIS: I don't remember. I'm sure we must have, but I don't remember. As us lawyers say, "I have no independent recollection." [Laughter]

GREENE: I can think of something that the Nixon [Richard M. Nixon] people used to say....I can't remember, they had a cliché, too, that they used.

REIS: Okay.

GREENE: How do you feel about Navasky's [Victor S. Navasky] statement that Robert Kennedy's description of this bill as restricted or limited was not fully honest? Since his expertise and experience in the McClellan Committee [United States Senate Select Committee on Improper Activities in Labor and Management] had exposed him to the fact that state and local wire taps were available to federal authorities. Does that seem like a fair statement to you?

REIS: I think, I'm afraid so.

GREENE: This may seem too....Do you think this was deliberate, that they advertised it as something that it was not, as a means of....

REIS: I don't know. I really don't know.

GREENE: Do you recall any discussions in '61 about whether or not to extend these restrictions to the state and local levels? Or that doesn't come up until later?

REIS: I certainly couldn't put it in terms of time. As a matter of fact, I don't recall the later discussions either.

GREENE: Well, the '62 bill did...

REIS: I know. I just don't recall the discussion.

GREENE: ...don't know how it got there. Okay.

REIS: And it may be that I didn't have much to do with the '62 bill. I don't recall whether I did or didn't. Are you sorry you're wasting your time? You look awful taken aback.

GREENE: Well, I went over the end of the last tape, and this was one of the things that you had suggested that you would have something to say on.

REIS: Oh. I'm terribly sorry.

GREENE: Oh, that's all right. I mean, we can axe the questions if we don't have the answers.

REIS: All right.

GREENE: In any case, do you remember when you started to revise the bill and when you got involved in it?

REIS: No.

GREENE: Katzenbach, as I recall, said that he never liked that '61 bill, and told Robert Kennedy that right off, and almost immediately began to redraft. Does that sound....

REIS: I just don't recall.

GREENE: Okay.

REIS: Gee, I'm really sorry about that...

GREENE: That's all right. It could be that we're just on the wrong path. Do you remember the discussions as far as the '62 bill, about national security, which became such a broad.... You know, that was eventually used for the Martin Luther King [Martin Luther King, Jr.] tap, and it became

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almost to be used for almost anything.

REIS: No. I honestly don't

GREENE: Okay. That supposedly came from beaver....

REIS: Yes. Sounds like it.

GREENE: Maybe you could give me some reaction to the Navasky criticism on the pages that I showed you, remember? Do you want to look at them again? [Interruption]

REIS: As far as criticism of Kennedy's casual attitude in terms of enforcement I think, I'm afraid, that criticism was earned. So far as the public relations campaign is concerned, I just am not familiar enough with it to make a judgment.

GREENE: How do you interpret his casual attitude? Is it a lack of concern?

REIS: I think so. I think probably a feeling that that's just the way you do things. It was part of the atmosphere. And also, I guess, a real feeling that there's probably no other way to catch bad guys. But, obviously, in this area, there are people who know more about it than I do, and people he would have talked to more frankly than I. I suppose you people have talked to those people.

GREENE: Yes. Do you remember any involvement at all, by the way, in preparing his testimony on that bill in '62?

REIS: I do not recall.

GREENE: You don't. Is that something your office would likely have gotten involved in?

REIS: Yes. But I just don't recall that. [Laughter] Terrible.

GREENE: What about Navasky's criticism of the whole area of bugging? Do you feel that that....

REIS: The basic thrust of Navasky's criticism is, here's a whole big area of methods of law enforcement, which the chief law enforcement officer of the nation made no effort to determine who it's done, or to police what his subordinates were doing. Now, of course, there's another explanation that I don't see there, and that is that

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he's talking about the period '61, '62 when Kennedy was in the public eye. The brash, young, aggressive trigger man, for his brother, who shouldn't be Attorney General. And that involved mixing with Hoover [J. Edgar Hoover] in an area where perhaps Kennedy didn't want to, or feared to, or whatever. If you want to speculate about motives that's one that Navasky should have speculated about. I don't remember whether he did.

GREENE: You know, he does a very lengthy chapter on this area. He documents—the FBI [Federal Bureau of Investigation] very clever, he calls it “bureau speak”—how they covered their tracks at every single juncture.

REIS: Well, that's precisely this business of being the Germans, the German people. I admit that it took me—perhaps I'm not admitting, perhaps I'm pleading—a long time before I realized that a highly reliable source was not a human being. [Laughter]

GREENE: [Interruption] The point is that Hoover is a very tough, if you can use that word, adversary, in that he got it all down to a science after so many years of experience. None the less, Robert Kennedy himself, being as curious and as good an administrator as he was, if he'd really wanted to know, he would have known more. And he doesn't use the term, because it wasn't fashionable then, but I think he's sort of making a case for Kennedy and deniability, or what's since come to be known as the doctrine of deniability. Is that sort of your theory?

REIS: Well, I really don't know. It's just silly to speculate about it. If the suggestion is of a conscious....If there's a deliberate course in order to be able to deny it—that's what I mean by deniability—then I think you'd have to [Unintelligible] quite a few attorneys general, because none of them fit this. None of them did anything else.

GREENE: Of course, Navasky would say to that, or at least part of his answer would be, Kennedy was in a better position to monitor this whole thing than anybody else, because of his unique position. He was the only one who ever really could control Hoover, among the latter....

REIS: Well, and I would suggest that he wasn't.

GREENE: If you don't have any other recollections as far as this legislation goes...

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REIS: No. No point.

GREENE: ...then why don't I ask you a couple of questions about the bugging controversy that came up in 1966. You were still at the Department then, I believe...

REIS: Yes.

GREENE: ...and you mentioned on the phone that you'd helped Katzenbach sort of mediate, or attempt to mediate...

REIS: Attempt to mediate is a lot better.

GREENE: ...this dispute. What do you remember about that? How you got involved, and what the questions were, and....

REIS: You'll have to jog my memory on that. I was heavily involved, I do recall. But, for exactly, I do not remember what triggered the controversy now.

GREENE: Well, the initial trigger was a letter that Hoover wrote to Congressman Gross [Harold Royce Gross], H.R. Gross from Iowa, in response to queries, specific questions, that Gross put to Hoover on wire-tapping and bugging. And, of course, the conclusion you have to draw, I think, was that it was a setup, at least there is a very good indication that it was a setup, that he was too well-versed in his questioning for it to have been spontaneous. And then Hoover became extremely critical towards Kennedy.

REIS: Yes.

GREENE: I think I have, even though I never got the full text, the summaries that might help. [Interruption] It says that all wire-tapping and electronic eavesdropping done by the FBI while Robert Kennedy was Attorney General, was done with Kennedy's approval. And this was in a reply to a letter to Gross.

REIS: Yes.

GREENE: And Kennedy's office told that Hoover was misinformed. Oh, and Hoover produces as his evidence two things: Kennedy, a document signed by Kennedy which discusses the use of leased telephone lines

in New York. Remember that?

REIS: Yes. Un-hunh.

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GREENE: And also a letter to Senator Ervin [Sam J. Ervin, Jr.] from Jack Miller [Herbert J. Miller, Jr.] reporting how many wiretaps....

REIS: Yes. And which referred to bugs or something.

GREENE: Right. And that it had sixty-seven bugs in operation.

REIS: Yes.

GREENE: Now I've heard that those statistics in the Miller letter, for one thing, could only have come from the FBI.

REIS: Yes.

GREENE: Miller would have no incentive....

REIS: Un-hunh.

GREENE: Anyway, then Kennedy responds by saying he's misinformed, and then he produces Courtney Evans' [Courtney A. Evans] letter.

REIS: Yes. What was Courtney's letter?

GREENE: Well, it stated that Kennedy was not told of electronic bugging because Hoover needed no specific authorization for such eavesdropping, and he said that individual requests in serious national security cases were sent to Kennedy by the FBI for approval. And this goes back and forth, and then Katzenbach gets involved, and Katzenbach sort of takes that "they're both right" position, which angers everybody.

REIS: Yes. Right.

GREENE: I assume that it's somewhere in there that you get involved.

REIS: Yes. Me and Jim Flug [James F. Flug] kept drafting and re-drafting those letters, and looking at the evidence, and relooking at the evidence, and so on.

GREENE: What do you remember Katzenbach saying anything about this whole thing? I know Kennedy was very angry that he didn't come out more strongly in his favor, I guess. And Hoover, on the other hand, was angry because he had not more firmly supported him.

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REIS: Well, Katzenbach's instinct were to paint as favorable a picture as he could of Kennedy. His instincts also were to try to avoid [Laughter] fighting with Hoover to the extent possible. It was not avoidable. That couldn't be done. Obviously the two goals couldn't be met. He ended up in a fairly honest position, that is, to paint a fairly equivocal picture, and I think the facts were somewhat equivocal. He had dreadful fights with the FBI and, of course, at that point the principals were the admirable DeLoach [Cartha Dekle DeLoach], and....What's the other guy's name?

GREENE: In the FBI?

REIS: Yes. Mohr [John P. Mohr] I believe was his name. I always think of the two as characters out of Dickens, DeLoach as Uriah Heep, and Mohr as Bill Sykes. Really, I don't remember the details, but it was very, very rough.

GREENE: Do you remember Katzenbach being particularly concerned because he had access to the files, and he knew what the FBI had in the way of evidence that they could pull on Kennedy if he....

REIS: No. He never expressed that.

GREENE: Because it was my understanding that that was his big concern then, and he tried to convey this to Kennedy in an effort to moderate his anger.

REIS: Un-hunh. Maybe.

GREENE: You don't remember having to deal with that aspect of it?

REIS: No.

GREENE: Did you say Jim Flug was working on this with you?

REIS: Yes. Jim would have a far better recollection that I do. Did you talk to him about this at all?

GREENE: No.

REIS: I would suggest you do.

GREENE: Okay. Do you have any clear recollection or impression of what Katzenbach's perceptions of Robert Kennedy were in this whole thing?

REIS: I recall thing that he thought that Kennedy had

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not authorized the stuff. He realized that the picture was not clear, but from my discussion with him my impression was that he felt that Hoover had not established that he had informed Kennedy, and Kennedy had not authorized it. The point was that if Kennedy was guilty of what Navasky says he was guilty of, nobody from the FBI came forth and said, "Now you're the Attorney General. This is what we are doing, and we want your approval." To the extent that Hoover was suggestion that to Gross, it was just not true, and the record didn't establish it.

GREENE: Yes. Well my understanding is that these things were handled so casually, and they were sort of slipped in and Kennedy signed them, half the time not really even knowing what he was signing, and then they were quickly withdrawn, but they were placed in files as evidence for a later day.

REIS: Yes, yes. Whether he knew or didn't know I don't know, but he did handle them himself.

GREENE: Maybe a final question on this, if you don't have anything else is after it's all said and done, what questions remain in your mind about this whole controversy? You know, is it something that you've mulled over since?

REIS: The only question was that I didn't think you could ever assess the precise role of any of the authorities, and the question was that the Attorney General had not done what he should have done.

GREENE: That even if you believed that he really didn't know...

REIS: Yes.

GREENE: ...it doesn't excuse the fact that he should have known.

REIS: No. It's on a different level, but he should have known. I also go back to the fact that we're talking about a different atmosphere, a different time, and up to then no other Attorney General had done much about it, either.

GREENE: Do you think almost any of them could have been caught in the same kind of predicament?

REIS: Sure.

GREENE: In these questions that you....

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REIS: As a matter of fact, some of them would have liked to be caught in it....Some Attorney General would regard a letter from Hoover saying, "I never did anything without the approval of the Attorney General, and everything I did had his approval," I can think of a couple of attorney generals who would have been pleased. Even if it was wiretapping. [Laughter]

GREENE: It shows some control.

REIS: Yes.

GREENE: Did you have any of these reservations towards the end of the Kennedy administration yourself, or are they things you've come to since?

REIS: About the....

GREENE: The whole wire-tapping, bugging. The whole area.

REIS: Well, as I was forced into this dispute, looking for the facts—I don't know whether that's already past the end of the Kennedy Administration...

GREENE: Oh, yes, '66.

REIS: ...it became pretty clear to me that the matter had not been handled properly. I must admit, however—and that's really what I meant, that I was kind of right wing about this—I didn't have any great reservations before.

GREENE: There's one other thing in this whole area, and that is in July of '66, the Justice Department had to respond to the Supreme Court craze on FBI behavior in relation to the Black [Fred B. Black, Jr.] case.

REIS: Yes. It was in that context the fight between Hoover and Kennedy became so difficult for Katzenbach. I'm glad you reminded me of that.

GREENE: Okay, but that didn't surface in the crest to the same extent as it did later on, I don't think. I know Kennedy was very offended by the way that his role was portrayed in the Supreme Court brief.

REIS: Yes, yes.

GREENE: Were you involved in the drafting of that brief? Do you remember discussion about that?

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REIS: Yes. Yes. Oh, boy. [Laughter] Yes. Katzenbach practically wrote it himself. It was really in that context that Mohr and DeLoach were so unpleasant.

GREENE: In what respect? I mean, why were they....

REIS: Well, they wanted it much more clearly to say that it was all done by the Attorney General.

GREENE: And in that respect Katzenbach was protecting Kennedy to the extent he felt he could?

REIS: Yes.

GREENE: I know that Katzenbach contacted Robert Kennedy and showed him the brief, and he went through the ceiling. Do you remember talking to Katzenbach after that, and whether there was any discussion of changing it before it went out to the court?

REIS: I don't remember. I remember talking to.... That document was changed so much I can't remember at what stage we made what changes. I wouldn't be a bit surprised, knowing Katzenbach. But if Kennedy was mad, he might have tried his hand at still another change. I just don't remember.

GREENE: But he was doing a lot of the writing himself?

REIS: Yes. I don't mean to absolve myself. There are a number of people in the Department who....

GREENE: Who else would have worked on that team?

REIS: Well, Jim did. I don't remember who did in the S.G.'s Office [Solicitor General's office]. Who was Solicitor General then?

GREENE: Thurgood Marshall.

REIS: Was he still Solicitor General?

GREENE: I'm pretty sure he was. I'm almost positive because I've seen his name. [Interruption] It was Marshall. I'm almost positive of that.

REIS: Yes, okay.

GREENE: Is there anything else in this area?

REIS: No.

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GREENE: Okay, then. I know we talked generally about the area of civil rights as being another one where you were, ostensibly....What specifically do you think you'd have useful or interesting recollections?

REIS: Didn't we talk about civil rights?

GREENE: No, we've only talked about talking about it. I know I have your friend from Oxford [Oxford, Mississippi]—not your brief, but your report that you wrote. And I can use that as the basis for some questions. And I know the office was advisory. This is off the record.

REIS: Yes, I know. Oh, yes. So many people worked on it. I worked pretty hard on the '64 and '65 legislation, but so many people did that....

GREENE: But did you work on it while Kennedy was still in?

REIS: Yes.

GREENE: Yes.

REIS: Have you talked to Harold Greene [Harold H. Greene] at all?

GREENE: No. I don't think so.

REIS: He's a judge in the superior court.

GREENE: Oh, I know who he is. Actually, we may have an interview from the John Kennedy project [John F. Kennedy Oral History Program]. I'm just not too sure, but I can look it up.

REIS: I would suggest you do that.

GREENE: Is there anything about that that you think might be sort of a unique view, or you had a particularly good chance to observe?

REIS: Well, I would say it was in that area that I saw most of Robert Kennedy, and probably more than when I was executive assistant. On the other hand, I don't think anything unique....Unfortunately, I didn't keep a record, and there were all kinds of developments then, compromises, [Unintelligible] that kind of thing....

GREENE: Those things are very well documented now.

REIS: Yes, yes. That's really....

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GREENE: On the Oxford thing, because maybe we really don't even have to get into this, do you feel that you put down pretty much your whole experience in that?

REIS: Yes, yes. The only thing I have to add to that is, and I might do this on the record, I wasn't consulted, but at the time it happened I thought that the President had taken a chance he shouldn't have taken. He should have sent in troops. Immediately. And the political decision not to was based on criticism of Eisenhower and Little Rock [Little Rock, Arkansas] and I never could understand why he did take the chance he took. It was a terrible....

GREENE: Did you actually ever ask those questions? Afterwards?

REIS: Yes, I think so.

GREENE: Do you remember the answers? Was it [Unintelligible] or political?

REIS: I think that very basically, one that it was political, and two, that Bobby thought he had a deal with the Governor. And, in fact, he did have a deal, of sorts, with the Governor.

GREENE: As much as you can make with someone like that.

REIS: Yes. That's about all I have.

GREENE: Is there anything else in your association that you think we ought to....

REIS: No, I don't think so. I didn't like rumors.

GREENE: [Laughter]

[END OF INTERVIEW]

[-45-]

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