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Biographical Note
Lee Loevinger (1913-2004) was the Assistant Attorney General in the Antitrust Division of the Department of Justice from 1961 to 1963 and the commissioner of the Federal Communications Commission from 1963 to 1968. This interview focuses on the antitrust cases and legislation during the Kennedy administration and economic issues such as the steel crisis, among other topics.

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Signed: Lee Loevinger

Lee Loevinger

Date: 21 May 1971

Lee Loevinger– JFK #1

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Oral History Interview

with

LEE LOEVINGER

May 13, 1966
Washington, D.C.

By Ronald J. Grele

For the John F. Kennedy Library

GRELE: Commissioner Loevinger, do you recall when you first met John Kennedy or were asked to join the Kennedy Administration?

LOEVINGER: Well, those are two different questions. I remember when I was asked to join the Kennedy Administration very well. I do not. . . . Yes, I can tell you when I first met John Kennedy, now that I think of it. It was considerably before that. I first met John Kennedy in Minneapolis at a Jefferson-Jackson Day dinner of the Minnesota DFL [Democratic-Farm-Labor] Party. He was then a candidate for the nomination, and I had been a member of the DFL party for many years. I attended this dinner. Either before or after the dinner I was introduced to John Kennedy, who was then a senator. This was, as I say, before the Convention and before the election. I don't remember when I first met John Kennedy as president, but I remember very well when I was first asked to join the Administration.

GRELE: When was that?

LOEVINGER: Well, I was at that time a member of the Minnesota Supreme Court. I remember coming into my chambers one day late in January, 1961, and there was a message for me to call a John Seigenthaler in Washington. It

was a name that was unfamiliar to me. I returned the call. This, of course, was a young man who was administrative assistant to the Attorney General. He said the Attorney General would very much like to have a chance to talk to me personally, could I come to Washington and talk to [Robert F.] Bob Kennedy? Well, I told him that I could think of only one thing that the Attorney General would be interested in talking to me about, and that would be about taking a job in Justice. I assumed that this would be in the Anti-trust Division because that was where my expertise and reputation, such as it was, lay. I told him that I was happy as a member of the court and wasn't at all sure that I was at all interested in quitting that position for a job in Justice. We had a little talk and he urged me to come. Finally I said I would talk to some of my friends about it, particularly Senator [Hubert H.] Humphrey, if he thought I should. Thereafter I did call Senator Humphrey, and he urged me to go and talk to the Attorney General at least. He said, "You might as well go talk to him, you don't lose anything that way." So I finally called John Seigenthaler back and said okay, I'd come down and talk to him.

GRELE: Did Senator Humphrey recommend you for this position?

LOEVINGER: I haven't any idea. I don't think so. I'm really not sure where they got my name. They had this famous talent hunt, and I had done a fair amount of writing in the field of anti-trust. I rather think that somebody may have mentioned it casually, and then somebody else started checking around. There are not a great many good Democrats who are known as liberals and who have a standing as anti-trust lawyers. In addition to this, I suspect there is, or was, a certain amount of prestige attached to my position as a judge of the Minnesota Supreme Court. I believe that it was this combination of factors that led Bob Kennedy, and whoever else was involved in the decision, to decide to talk to me. I've talked to Humphrey and to Senator [Eugene J.] McCarthy, and I really don't know how they got ahold of my name. I do know that Senator Humphrey did not urge or push for my appointment because I wasn't that interested in it at that time, and Senator Humphrey was and is a very good friend of mine, personally.

GRELE: Were you on the Minnesota Supreme Court at the time of the Wisconsin primary?

LOEVINGER: I've forgotten. When was that?

GRELE: That was in April of 1960.

LOEVINGER: Yes, I'd just gone on.

GRELE: Then you would have been obligated not to engage in political activity.

LOEVINGER: That's right.

GRELE: You did not work for Senator Humphrey in those primaries.

LOEVINGER: I did not work for Senator Humphrey in those primaries as I remember. I believe that my wife did some office work for him in Minneapolis.

GRELE: Your appointment as Assistant Attorney General in charge of the Anti-trust Division was announced on February 17, 1961. Between the time you were approached and the appointment was announced, could you detail for us how you agreed to come and join the Administration?

LOEVINGER: Well, I came to Washington pursuant to the conversation I've just mentioned. I came in to the office and met Bob Kennedy. He told me that this was indeed the position he had in mind. We chatted for a few minutes. And then he said that he was busy getting the thing organized, but he would like to talk to me at some length and asked if I could come back later that afternoon or evening. As I recollect, it was 6 or 6:30 in the evening that he suggested. I said, "Sure. That's fine." I would like to talk to him in a little more leisurely atmosphere, too. So I did go away. I came back. We had a very long conversation about anti-trust and his ideas for it. In general, what he said that I recollect and feel free to repeat is that he believed that his administration of the Department of Justice would be looked at very closely because of his relation to the President--

this would be one of the crucial things in judging the Administration--that in the Department of Justice he believed that the two crucial programs would be those connected with crime and anti-trust; that these were very important to him; and that he wanted to participate in the administration of these things--that he didn't want somebody who would go off completely on his own and just have a lot of his own ideas as the foundation of an anti-trust administration, but that he did want an expert who would give direction and have a progressive and energetic anti-trust program. I told him that this was fine with me, this was just the idea that I had. I said that I was very interested in anti-trust. In fact, I used a phrase that was later quoted in some of the press. I said that I had always believed that anti-trust was extremely important to this country; that it represented a common ground on which political liberals and political conservatives could meet because it was obviously indispensable to the maintenance of a free enterprise system, because it contributed much to a free political society, and because it did compromise some of the ideas of those who are both in favor of and skeptical of big business. I said that anti-trust was a kind of secular religion with me. As I say, I think that this phrase was subsequently picked up and reported by Fortune and some others. I also told him that I not only agreed with the notion that the Attorney General should have a good deal to do with the anti-trust program or administration, but that it seemed to me that this was particularly important in this kind of an administration. For myself, I had only one real demand to make and that was that he be accessible so that I could discuss with him the problems that we have. I said that I would be glad to work with him and to help formulate an anti-trust program that he felt was appropriate, but that in order to do this I had to have the opportunity to talk to him and discuss problems with him when they arose. I guess in general he agreed with that. He didn't really express himself specifically on a lot of points at this time. He did take me down to meet Byron White. As I remember, [Louis F.] Lou Oberdorfer was sitting in Byron White's office when we went down. He introduced me to Byron and Lou Oberdorfer. Then he went back to his office, and I sat and chatted with Byron White a bit. Then Byron White took me back upstairs to see the Attorney General, and we talked a bit longer. I would guess that the

whole conversation that evening lasted two or three hours. The whole business was fairly lengthy and it was what we had contemplated: A considerably more leisurely and extensive discussion of our respective ideas about this than had been possible during the afternoon.

GRELE: When he mentioned to you anti-trust and crime as being, what he predicted would be, the most important aspects of the administration of Justice, he didn't mention civil rights?

LOEVINGER: Well, I've been trying to recall that myself. There may have been some mention of civil rights. I don't rightly recollect. But this is of interest to me in several respects. Of course, I was in Justice during this whole period and saw the civil rights thing develop. I think it's fair to say, at least my observation was, that Bob Kennedy, at least, did not anticipate the predominant position that civil rights would take. In fact, when I left the Department of Justice to come to the FCC, there was a little dinner with a lot of anti-trust people there. I made the usual farewell speech, and I said then what I really believed then and what I really believe now. That is essentially this: Anti-trust had traditionally been the showcase Department of Justice. It has attracted the best lawyers; it has involved the most spectacular cases; it has been the most important in terms of social, and economic, and political policy; it has been the most sensitive. The attorney generals and presidents have been the most concerned about it. This was certainly true at the time that Kennedy took office because this was during the pendency of the big electrical cases. In fact, I was in Washington--I guess it must have been my second visit to Washington, perhaps my third, I've forgotten--when Judge [J. Cullen] Ganey in Philadelphia imposed sentence on the electrical companies. This of course got great headlines and was a prime topic of conversation.

I think if you will look at the first year, year and a half perhaps, of the Kennedy Administration, you will find that 75 to 85 per cent of the publicity regarding the Department of Justice involved anti-trust cases. Even during at least the first year of the Kennedy Administration, anti-trust continued to be the showcase department. Then came

Birmingham and the civil rights problems. This was something that was certainly not, whatever else it may have been, a deliberate choice by either the President or the Attorney General. This was one of those tides of history that flow without deliberation or choice or planning by any specific one or two men. Of course, there were leaders in the Negro civil rights movement who wished this to happen, and I don't deny them any credit. But it was nothing that was done in the Department of Justice to bring this on. What happened was that by 1963, civil rights had become the showcase division of the Department of Justice and anti-trust had been, not entirely but to a large extent, eclipsed. In the last couple years or since then, I would guess that a very large proportion of the publicity attendant on Department of Justice activities has concerned civil rights and crime with anti-trust a poor third rather than an easy first as it was at the beginning. One thing that is perfectly clear to me, and that I am sure Bob Kennedy would agree with, was that this was not a matter of choice, but a matter of a historical development.

GRELE: In your conversation that first day with the Attorney General, however, what was your impression of his comprehension of the social and economic and, indeed, the political repercussions of the anti-trust action?

LOEVINGER: Oh, that's a tough question. Bob Kennedy made no pretensions to being much of an anti-trust expert. In fact, he quite openly said that it was a strange field of law to him and one in which he had no expertise and very little acquaintance. On the other hand, he was one of these people who instinctively have a good deal of appreciation of the political and social consequences of most of these programs, and I think he had a pretty good appreciation of the wider implications of anti-trust enforcement. I really couldn't say much more than this. How deeply his appreciation ran, how widespread it was, I don't know. I didn't try to explore the outermost limits. This isn't one of the things that you do to an attorney general in any event. However, there is this to be said: Bob Kennedy and Byron White were very close. Byron White was deputy in every sense and in some senses was sort of the acting Attorney General,

as you know from other sources, undoubtedly. As it turned out, Bob Kennedy did many things for the President that were outside the normal scope of an Attorney General's duties. While he was off being assistant President, Byron White was being acting Attorney General. Now Byron White did know anti-trust. He knew anti-trust as a lawyer, as a technician, as a social philosopher. Interestingly enough, one or two cases came up while I was in the Anti-trust Division in which I disqualified myself because my firm had represented some of the parties to the litigation, and Byron White was also disqualified for the same reason. As I remember, my assistant [Robert L.] Bob Wright handled them and took them up to Bob Kennedy's assistant, [Andrew F.] Andy Oehman, and they had to struggle with them as best they could because Byron and I were both disqualified. But the point is that he had anti-trust experience, and I think a very keen and wide-ranging intellect. I think that he thoroughly understood the,implications of anti-trust so that between Bob Kennedy and Byron White I think there was pretty clear comprehension.

GRELE: What was your general impression of the staff which the Attorney General had gathered in the Justice Department?

LOEVINGER: Oh, I think it was a very competent, high-level staff.

GRELE: Was there a rapid change in the thinking in the Anti-trust Division [Dwight D.] Eisenhower appointees were replaced with Kennedy appointees?

LOEVINGER: Eisenhower appointees were not replaced with Kennedy appointees in the Anti-trust Division.

GRELE: There were no Eisenhower appointees?

LOEVINGER: Pardon?

GRELE: There were no Eisenhower men in the Justice Department?

LOEVINGER: No, I won't say that, but let me pay a tribute to

my immediate predecessor, [Robert A.] Bob Bicks. Bicks was a young fellow who, incidentally, never officially held the job. He had been an assistant to Stanley Barnes and [Victor R.] Vic Hansen who had been the previous Assistant Attorneys General. He had been First Assistant, and under Hansen, I believe, he ran the division. When Hansen left, he became the Acting Assistant Attorney General. For a long time, Eisenhower never got around to nominating him, and after he was nominated, he was never confirmed. So he never actually held the position of Assistant Attorney General. I believe this was because the Republicans just weren't very enthusiastic about doing anything efficient, and Bicks was an efficient and a good head of the Anti-trust Division. There is a real esprit, a real competence, in the Anti-trust Division. I said before that it generally attracted the best men, and I believe this was true. I think that even down to today, many of the very top-grade law school graduates seek employment first in the Anti-trust Division of the Department of Justice, as their first preference of all government divisions and departments. So it has always had a first-rate staff. Some of the men who were in the Anti-trust Division when I took charge as Assistant Attorney General were men who had been there when I left as an attorney in 1946. One or two men left. I think, for example, of one man, George Haddock, who was chief of one of our West Coast offices. I did everything I could to keep George from leaving. He left because his family was getting to the point where he needed more money. He had an offer at substantially more money with a law firm. I offered to give him as much as we could in the Department of Justice, and I remember he went home and spent one or two miserable nights because he hated to leave. He came in just haggard from loss of sleep and almost tearfully told me that he would like to stay. He and I had been friends back in the 1940's when I was in Justice, and he hated to leave, but he just felt he had to. The people we lost were largely people like this. There were one or two people who we kind of pushed out. This had nothing to do with politics. The people who were pushed out were pushed out because they were incompetent or unqualified. As a matter of fact, one of the people that we pushed out was a red-hot, fanatical, partisan Democrat. He has always resented this. He's been particularly bitter at me. He thought I was just a dirty dog and a bum for

letting a fine fellow and a good Democrat like him be pushed out. But he was in effect told either to resign or he would be fired, and it was because he refused to do his work. He was drunk a good part of the time. He was just downright incompetent. There was no partisan turnover. The Anti-trust Division during the period I was there was run on a strictly merit basis, and I never had one hint from either Bob Kennedy or Byron White or anyone else that it should be run any other way.

GRELE: I have a qualifying phrase to that question. Would this have been possible given the long term nature of most anti-trust actions? Would any rapid change in policy or personnel have been possible?

LOEVINGER: Yes, I think it would. My own personal opinion, based on some observation of Washington, pretty limited perhaps. . . . But I think the notion of patronage in government bureaus is kind of an archaic notion. I'm sure that some of it would be attempted and would be engaged in, but I think the day is past when the government can be used as a big patronage mill. I think that in the important government departments and agencies, the work is too complex and too technical and that your really able, technically qualified people are too important. You can't replace them and you can't afford to get rid of them. I really don't believe that patronage is a very useful game for an administration to attempt to play with the federal government. At least in my experience since 1961, there's been very little of it. Interestingly enough, the patronage pressures that I have gotten have been not from the White House or from the Attorney General but rather from friends, mostly personal friends of mine. They are admittedly people who are Democrats and who will come and say, "Look it, I've supported the party, and I've been a friend of yours. Here's my son. Nice little fellow. He wants a job. Can't you insulate him from all of this nonsense about having to go through the usual procedure and compete with everybody else? He's a son of mine and a friend of yours. Get him a job." These are the kind of pressures that you get.

As I say, I literally can say that there was simply no pressure from either of the Kennedys. Interestingly enough, there was one man who was a personal friend of both the President's and Bob Kennedy's, who was a first rate lawyer, and whom they wanted to bring into the government. Bob Kennedy called me and told me about this fellow. He was an older lawyer. Say, older, I guess, mid-thirties or so. He said, "We think the best place for him to get training would be the Anti-trust Division. We'd like to have him have this background. I'd like to have you talk to him. See if you think you can use him. If you can, and if you have a place for him, fine. If not, don't worry about it. We'll get him a job. There are plenty of other places in government where we can find work for him. I can find plenty of places. You make up your own mind." Well, as a matter of fact, the guy was a very able guy, and in fact, I did find a place for him. He proved to be very valuable in the Anti-trust Division. Unfortunately, we didn't keep him too long because he moved on to another spot. I really felt that there was no pressure being exerted on me, even in this case, to take a man who was a personal friend of Bob Kennedy's. He could have very well made it anyway. Bob and I knew each other well enough, we were in constant enough contact, so that it wouldn't have been very hard for him to make it evident that he felt I ought to find a place for him, but he really went out of his way to say, "If he doesn't fit in, just let me know and he'll go some place else." So he put me under considerably less pressure than, as I say, people who were friends of mine, whom I've known, who felt that I ought to give their nephew or their son or a friend of theirs a job.

GRELE: What about a change in policy from the Eisenhower Administration?

LOEVINGER: Well, again, I don't think there was any dramatic change in policy. Rather, I would say that this is what occurred: Bicks did pretty well. I think that he ran away with it a little bit, and he probably went beyond what the Eisenhower Administration really wanted as an anti-trust policy.

GRELE: He began the cases against. . . .

LOEVINGER: He began the electrical company cases. Actually, they were finished in the Kennedy Administration. The criminal cases were finished, and the civil cases, which were the ones that really counted, I think, were instituted while I was there under the Kennedy Administration. We built on the evidence that Bicks had uncovered, of course, but we did fashion the civil cases in what I thought was the most effective way. I think that the real difference was that this was now a policy which was an administration policy. Under Eisenhower, I think it was just an anti-trust policy. Under Kennedy, it was truly an administration policy because I sat down and talked personally to the Attorney General--always to Byron White and usually to the Attorney General--about the important cases that we brought. These cases just weren't instituted without the Attorney General knowing and understanding them. Some of the cases he spent a long time on; others a relatively casual explanation would be sufficient, and he would say, "Go ahead." But it was an administration policy.

GRELE: What, in general, were the problems you faced in this position?

LOEVINGER: Well, one of the problems--and when I left I told this to Bob Kennedy--was that I didn't quite get what I thought I had by way of a commitment initially of full and free access to the Attorney General. This wasn't that he was unwilling to see me, but that he was busy with so many other things that frequently matters would be delayed because I just couldn't get to see the Attorney General. Sometimes he would be out of town. Of course, Cuba came along, and he was just wrapped up in this, for--I've forgotten how long--a period of weeks. Then there was the Cuban refugee problem. When these other things were pending, it really was very difficult to get attention for anti-trust matters. It wasn't that anybody was against them, but that there was just something more urgent going on. Then, of course, after the civil rights things broke, they more and more occupied the Attorney General's time. As I say, I think it was just a matter of fighting for attention, and getting the time for consideration was probably the principal problem.

GRELE: Was there any problem in, say, developing a concept of what the Anti-trust Division should do? How, in general, the Anti-trust Division should pursue its objectives in terms of the overall economy, either promoting efficiency by allowing conglomeration or promoting competition?

LOEVINGER: Well, insofar as there was a policy question, the question was, I think, somewhat more practical than that. The question, basically, came down to the relative emphasis that you give to price-fixing cases on the one hand and merger cases on the other. The price-fixing cases tend to be the conspiratorial action cases. The merger cases are the structural cases. I think--well, I know--that some of the congressional anti-trust liberals believe that we did not emphasize the merger cases, the structural cases, enough. This was to some extent the Attorney General's choice. Initially, he did feel that we should emphasize price-fixing conspiracy cases more. He never said that we should not bring the merger cases or not pursue them but he felt that they should not be the major emphasis initially. However, I believe that these initial ideas came to have less importance. And in fact, while I was there, I think we brought more merger cases than in any comparable period before or since. And these were all approved by Bob Kennedy. There were a few cases of the structural variety that were considered and batted around and that we never really quite got off the ground for a variety of reasons.

One of the most interesting ideas that we considered, incidentally, was the possibility of bringing an anti-trust case in the Washington area based upon the theory of a conspiracy to enforce racial convenants. We seriously considered the possibility of using the anti-trust laws in an effort to secure some kind of open housing rule for the District and, possibly, its suburbs. Now the. . . .

GRELE: Where did this idea originate? Do you know?

LOEVINGER: I don't really remember where it originated. I think it may have been my idea originally. I've forgotten. But we had people working on it. We

conducted some investigations; we got some facts; we drafted some papers. The reason it never really was tried was for a variety of causes. In the first place, as is obvious, there are some very grave technical problems with this. This is not the primary purpose, or the legislative purpose, of the anti-trust laws, and to use the anti-trust laws for this purpose gives you some real technical legal problems to overcome, and we were never wholly satisfied that those had been overcome. Then, another problem was that if you started to do this, you diverted attention from what might have been a more effective approach: that is, either an executive order or legislation. Finally, as civil rights itself came to be more and more important and came to dominate the Department of Justice thinking in contrast to anti-trust, it came to seem sort of anomalous to use anti-trust to achieve a civil rights objective when so much effort was going directly into the civil rights field itself so that I guess the thing just kind of died a natural death. It never really was done. It was, however, seriously considered. I have a little hesitation in this field because I don't really know how much of this behind-the-scenes discussion ought to be a matter of public record. Obviously, a good deal of the conversation between myself, the Attorney General, and the Deputy Attorney General is privileged in a legal sense and, probably, something which shouldn't be made a matter of public record in any sense. However, I don't think that this particular thing is anything that anyone would deny or would feel hesitation in admitting. It was referred to once or twice in Senate hearings, and I'm not sure about this, but I think that I testified that we were considering it. I believe it's fair, in view of the subsequent record, to say that we considered it quite seriously and really put some work in on it. But for a variety of reasons it just never got to the point where it was actually tried and, I take it, now really would be regarded as an anachronism more than anything else because the direct legislative approach is now the one that Congress and the President obviously favor so that there simply is no point to this anymore.

GRELE: If we can move on now to some of the particular cases. Before we begin, let me say I appreciate your feeling that a lot of this might be privileged

and therefore would be unwilling to put it in the public record. But let me also assure you that anything you tell me remains closed until you, yourself, wish to open the transcripts.

LOEVINGER: Well, I don't have any feelings about this. I don't know that I'm in a position to tell you to open or not to open the transcript. Bob Kennedy is the guy who really is involved here, and as far as I am concerned, I have no hesitation in discussing or disclosing anything. Anything that he is willing to disclose, I am.

GRELE: What was the status of the DuPont case when you came to the Anti-trust Division?

LOEVINGER: Well, as I recollect, the remaining aspect of the DuPont case was the remedy. The decision for divestiture had been made, but the entire problem of divestiture remained to be decided by the District Court. During this period there were proposals for legislation to cushion the tax impact, and we worked out the remedial decree, which was the one that was finally entered. We had some real debates as to the position we should take in Congress on tax legislation. I believe that we finally ended up opposing any special legislation, but despite this Congress did pass a special law. The decree was entered, and divestiture took place.

GRELE: What were your reservations about the special legislation? Just that it was special legislation?

LOEVINGER: Mostly that it was special legislation and, I guess, that it would deprive the Treasury of some revenue. I must say that I, personally, didn't object too strongly to the legislation. I have forgotten the details of it. We had some positions with respect to specific details. We did not want legislation that would simply offer a tax bonanza to anybody that was found to have engaged in an illegal merger, obviously. On the other hand my own position was that I didn't see any great objection to permitting the profit of the sale of General Motors stock to be treated as capital gains. As I remember, this was the great issue. I think others in the Department of Justice

had more reservations about this than I did. As I recollect, the Tax Division was more opposed to legislation than Anti-trust. This is natural, you see. The Anti-trust objectives are to get these businesses separated. And if we have to give up tax money in order to do it, as far as Anti-trust is concerned, generally, we didn't care too much. You didn't want to give anything away, but you're willing to sacrifice tax objectives to achieve anti-trust objectives. Tax, on the other hand, is primarily concerned with preserving the revenues and preventing as much special legislation in this field as possible. So it was this kind of debate, and of course, the Attorney General had all the divisions in on this kind of thing.

Incidentally--and this has to do with the prior thing involving the racial convenant case and this, as well as others--Bob Kennedy had a kind of cabinet system of his own. I don't know whether they still do in Justice or not. But on a difficult case or a difficult matter, he would assemble the heads of his divisions and [Archibald] Archie Cox, who was the Solicitor, and the deputy, and we'd have discussions and debates with everybody chiming in. I sat in on decisions to bring some of the cases against [James] Hoffa, for example. I say I; I mean all of us. He'd get the whole group there, and there'd be general discussions. Ramsey Clark, who is head of the Lands Division, would be asked for his opinion on anti-trust cases, and incidentally, he was very sharp on this--a very able man. But, this was a fairly common procedure in Bob Kennedy's running of the Department of Justice. So that on many of the major things, all of his prime assistants would sit in and discuss it with him.

GRELE: In the discussions on the DuPont case was the role of Clark Clifford ever mentioned?

LOEVINGER: Not that I remember.

GRELE: Were there any particular pressures on you in the DuPont case in one way or the other?

LOEVINGER: I don't remember any great personal pressures. Of course, you're always aware on this kind of a thing of the powerful considerations involved.

The DuPont Company was obviously very interested in. . . . I had several conversations with Crawford Greenewalt. I don't remember at what point these occurred. Mr. Greenewalt is a thorough gentleman. Incidentally, a very, very cultivated guy; a guy with real academic qualifications, not just a Babbitt type of businessman, but a highly intelligent, highly educated, facile intelligence. He argued strenuously for the position of his company, as indeed he should, and you would expect him to. They were intelligent and forceful arguments, and they were presented on their merits. Various senators and congressmen were interested, and we had many discussions with many people on this with differing viewpoints expressed. I don't have any impression. . . . Maybe it's my personal reaction to these things. Maybe I'm insensitive or don't understand implicit pressures or something. I've never really felt politically pressed on any of these things. It seemed to me that the arguments were presented for what they were worth, at their face value. They were legitimate arguments. The fact that congressmen and senators and lawyers and businessmen presented the arguments was perfectly natural. They were the people who were concerned and who were interested. Nobody ever made any political threats to me. Nobody ever told me that you'd better do this for your political health or anything of this sort. They were just arguments about what ought to be done and considered and conducted in that fashion as far as I was concerned.

GRELE: What were the origins of the civil cases in the electrical company proceedings?

LOEVINGER: Well, I don't quite. . . .

GRELE: Was this normal procedure?

LOEVINGER: Oh yes, this was perfectly normal for. . . .

GRELE: Did it involve the decision to pursue the civil cases rather than the criminal cases?

LOEVINGER: Oh, it did involve a decision, but it was a perfectly normal decision. It was one that we would have made. As a matter of fact, some of the civil cases had been started. There were some

real policy issues involved here. A couple of times I really went to the mat with General Electric. The issues were these: that the civil cases that had been started late in December of 1960 before I got there were drafted, in my opinion, in very narrow terms. They were drafted in terms of specific commodities and specific practices. I felt that broader decrees would be justified. There were two questions involved: one, General Electric argued that there had been a kind of implicit commitment to stick with the narrow form of decrees; and then there was the other question, whether or not this Kennedy Administration should take the responsibility for going out for tougher decrees than Bicks and the Eisenhower Administration had sought. Well, the Attorney General and Byron White backed me up. In effect they said, "You get the kind of decrees that you think need to be gotten." General Electric went into court and argued before Judge Ganey that there was an implicit commitment in effect not to seek broader decrees. The head of our Philadelphia office told me that he just didn't quite know enough about this to meet this argument. So I told him to make an appointment with the judge, and I'd go in and argue it. I personally went up to Philadelphia and went before Judge Ganey and talked to him with the General Electric attorneys, and in effect he said that he didn't think there was any commitment by the Department and we were free to go ahead and get the kind of decrees we thought we ought to get. At this point, this is exactly what we did. While General Electric didn't after this say, "Well, okay, you can just have anything you want," we did sit down and bargain it out. We made a few compromises, but we ended up with what I thought were effective and good decrees. They were much broader than those originally sought. And as I say, I had complete backing of the Department on this. It finally ended up with personal negotiation between me and the General Electric Vice President and General Counsel, [Lauren Irven] Larry Wood, and we finally came to settlement of these. There were two sets of civil cases--the cases seeking decrees and the cases seeking damages. I settled both of them with Larry Wood. Then, once we got General Electric settled, the rest of them came along fairly easily.

GRELE: I have been told that the Attorney General was

personally upset at the behavior of the executives of General Electric. Does this square with your recollection?

LOEVINGER: Yes, I believe that he personally was concerned with this and thought that it was wrong. I don't know what upset means.

GRELE: Well, that he thought it was immoral.

LOEVINGER: I think there was no question that he thought it was wrong. He said so. He said so very openly, very plainly, and publicly.

GRELE: You must have been involved in the mobilization of the Anti-trust Division during the steel crisis?

LOEVINGER: Oh yes.

GRELE: How did this originate? When did you first hear of the steel crisis?

LOEVINGER: This recollection may be slightly faulty, but my recollection is that the interview between [Roger] Blough and President Kennedy was on a Tuesday night. I was in Des Moines making a speech at that time. The White House called the Department of Justice. I believe [Nicholas deB.] Nick Katzenbach was then Deputy Attorney General. I think that Byron White had gone on to the Supreme Court then. The initial order to the FBI to conduct the investigation was given by Nick Katzenbach. I was out of town. I got back in town the next day, and they immediately told me all about it. I make a point about this only because the incident about waking somebody up at 2 o'clock in the morning had occurred pursuant to Nick's instructions. Now, this was not Nick's fault; in fact, this wasn't anybody's fault. I assume that this incident has been gone over, maybe not. It was simply one individual FBI agent who took his instructions very literally and was very zealous and started calling somebody up at 6 or 8 o'clock at night and then just kept calling until the guy got home. He finally got home at 2 o'clock in the morning,

and the FBI agent said, "I'm coming out to see you," because he had been told to get this as fast as he could. You just never thought in giving instructions to say, "Well, do this as fast as you can, but don't wake anybody up between midnight and 6 a.m." You know. There was simply no fault involved in this. At least, such as it was, it occurred as a result of this initial instruction. After that there were a couple of meetings at the White House in the Cabinet Room with a number of Cabinet officers, sub-Cabinet officers, including myself, present, and there was a discussion of what ought to be done. In the presidential discussion I think that anti-trust was played down. In the presidential discussions the emphasis was laid upon personal persuasion and personal contact. The anti-trust was definitely secondary. It so happened that we had some steel industry investigations going on, and in fact we were prepared at the time that this occurred, or we were very close to being prepared, to bring some steel industry cases. Those were subsequently delayed slightly in order to avoid any impression that they were the result of the steel pricing matter. There were some. . . . Again as I recollect, the steel price crisis, if you want to call it that, was in April of 1962. And we finally brought some indictments in the steel industry, I believe it was in the latter part of May. They would have been brought a couple of weeks earlier had it not been for the steel price problem. But they were not changed otherwise. They were simply delayed a little bit in order to avoid the impression of being connected.

GRELE: You said that the anti-trust was played down in the presidential conferences. Were there conferences in the Justice Department where it assumed a more vital role?

LOEVINGER: Well, sure, we discussed it in Justice, and in Justice obviously anti-trust was the principal subject of concern. Justice did not have this over-all personal persuasion role, and also it didn't have all of the people who were in a position to talk to steel company executives. Anti-trust was our problem; anti-trust was a Justice problem. From the over-all government view there were lots of other angles.

GRELE: In the various conferences on the steel crisis

was there a general comprehension by the President or the Attorney General of the various problems connected with administered prices?

LOEVINGER: Well, I don't know. You know, I hate to accuse the President or the Attorney General, who are two exceedingly bright guys, of ignorance on this subject, but I don't think that they had the concern with, or background information about, what is called the administered pricing problem that, let us say, Senator [Estes] Kefauver and I did.

GRELE: If we can move on now, were you in the Anti-trust Division during the various bank cases?

LOEVINGER: I sure was. In fact, if there is any one aspect of anti-trust administration that can fairly be said to be the product of my administration, I think it is the banking cases.

GRELE: Why were you so concerned with these?

LOEVINGER: I wasn't so concerned with it. They simply came up during my administration. Actually, the first of the banking cases was a Philadelphia bank case. This was filed before I was nominally the Assistant Attorney General. However, I remember it very well because two of the assistants, George [D., Jr.] Reycraft and [W. Wallace] Wally Kirkpatrick, were there at that time. Wally, as the first assistant, was nominally acting Assistant Attorney General. In fact, however, I was in the office. Bob Kennedy discussed the case with me rather than with Wally, and I advised him to file it. Wally's name appears on it and my name does not, but in fact this was probably the first case that was filed at my suggestion and pursuant to my advice to the Attorney General.

GRELE: As you saw it, what were the issues involved in these cases?

LOEVINGER: Well, the legal issue, of course, was obviously whether or not the anti-trust laws applied to banking. And the social or economic issue was

whether or not banking is the kind of activity as to which anti-trust should apply. I had previously, or at about this time, had an informal talk--luncheon session--with [John Kenneth] Ken Galbraith, who at that time, I think, had been designated as Ambassador to India but was in Washington working with the Administration. I had asked Professor Galbraith what he thought anti-trust ought to do. His suggestion was that one of the most important things it could do was to free up banking practice from the restrictive effects of non-competitive agreements. He thought that, from the social and economic viewpoint, moving anti-trust into the banking field would be a highly salutary thing. This was not the grounds of moving, but I must say it did reinforce my own conviction on the subject. And I'm still persuaded that this was a very good thing and has had a very good effect. I think it is a wholesome effect; I think that, on the whole, banking is better off for it and the economy is better off for it.

GRELE: In these cases did you have any relations or communications with Capitol Hill, especially Senator [John L.] McClellan?

LOEVINGER: Not that I recollect, no. I had none with Senator McClellan that I recollect. And I don't recollect conversations with any other senators or congressmen. It's possible that I may have talked to Senator Kefauver about this. Kefauver was a good friend of mine, and as you know, a strong anti-trust supporter, and I had conversations with him from time to time. As a matter of fact, just before he died we'd had a little talk, and he said, "Come on up to the office. Summer's coming on. I'd like to just put my feet up on the desk. Maybe we can have a couple of sandwiches sent in and just kick around the whole anti-trust situation and explore our philosophy further." I said, "Sure, I'd be glad to do this. I'm going out to Minnesota for a few days, and I'll give you a ring as soon as I get back." And while I was in Minnesota, he died. But I had this kind of relationship with Senator Kefauver, and I discussed a lot of things with him kind of casually and informally just by way of anti-trust philosophy. But there was no effort made to change our position on this by anybody, by political influence that I recollect.

GRELE: What were Senator Kefauver's opinions of the pace of anti-trust action in the Kennedy Administration?

LOEVINGER: Well, I think he would have liked it to be a little faster and a little more vigorous, but he was a pretty practical guy. He knew the problems and he was the best supporter that we had. Well, Kefauver and [Emanuel] Celler were the two best supporters that we had on Capitol Hill. I think Celler had a broader field of activity and interest.

Incidentally, I don't know whether this is in your questionnaire or not, but this makes me think of something that should be recorded for history. The only significant anti-trust legislation, in my judgment, that has been passed since 1950, was passed during the Kennedy-Loevinger anti-trust era. This was the bill for civil investigative demand. This was passed by the efforts of Kefauver and Celler, but these efforts were made at my instigation and request. I spent a long time with both Kefauver and Congressman Celler in persuading them that this was a bill that should be passed. Celler required more persuasion than Kefauver. But in fact, if it had not been for my personal conversations with Congressman Celler and my personally persuading him and Congressman Celler subsequently personally undertaking to push the bill in the House, this thing wouldn't have had a chance. As it was, it finally passed by a relatively narrow margin. At least there were a couple of very narrow votes on it.

GRELE: What were Congressman Celler's reservations?

LOEVINGER: Well, Congressman Celler was concerned, as were some other anti-trust people, that if you gave this civil method of investigation to the Department as a tool, you would reduce use of and emphasis on the criminal prosecution, and that you might weaken the sanctions that were used for anti-trust. He was also concerned that if you gave the civil investigative demand to the Department of Justice, this would weaken the case for pre-merger notification, which he thought was very important. It wasn't that he had any hesitation about giving the Anti-trust Division more tools, but he, I believe, felt initially that this tool might divert attention from other tools that he thought were more effective.

My own position was that, as a practical matter, you would have to have more emphasis on the civil enforcement, that it was hard to get criminal enforcement of anti-trust, particularly after the Supreme Court decisions that you could not properly use the grand jury as an investigatory tool. It was almost essential that you have something of this sort. Furthermore, I thought that this would not necessarily detract from pre-merger notification, but that while you were getting pre-merger notification, this would give you an investigatory tool that would enable you to do at least part of the job. I finally convinced Congressman Celler of this, and as I say, we did get the civil investigative demand legislation which I think, to this day, is a most important anti-trust enforcement tool, and which is now pretty generally accepted. But this was the only significant--and is the only significant--anti-trust enforcement legislation that has been passed since 1950. It was passed with the support of the Kennedy Administration. Bob Kennedy personally supported it; as I say, I worked on it; and we had the support of Kefauver and Celler. Without the support of all of these, it could not have been passed.

GRELE: Moving on now, was there any discussion in the Anti-trust Division over the Communications Satellite Bill?

LOEVINGER: Oh boy, I'll say there was. I think without the Anti-trust Division there would never have been a Communications Satellite Bill.

GRELE: Why?

LOEVINGER: Well, The Federal Communications Commission--again I've forgotten the year, early in '62, I believe--proposed essentially a consortium of the large international carriers, and they proposed that this consortium would simply put up a communications satellite and run it. It would be a carrier consortium running this satellite. The only real objection originated with Anti-trust. Anti-trust filed a protest and a brief with the FCC saying, "Look it. This is going to suppress all competition in this field, and certain conditions must be met if anything is to be done." We outlined four or five conditions that we

thought were the minimum conditions to be met in order to insure competition if anything was to be done. We also suggested some doubts as to having this done by a consortium. Well, this is what started the whole thing. From then, it developed into various doubts as to whether or not it should be done by a consortium. Then we told the FCC we didn't think that they should be deciding the whole issue.

I think eventually the White House passed word to the FCC to slow down and let somebody else take a look at it. Then it got into Congress, and in fact, we participated in this all the way through. I testified a number of times before congressional committees. Finally an inter-agency, intra-governmental committee was set up to draft the proposed act. Nick Katzenbach and I sat on this committee and participated in it all the way through. We dealt with congressional committees finally. This started when Nick was the Assistant Attorney General in charge of the Office of Legal Counsel. And by the time it ended, he was Deputy Attorney General. Nick actually went down and finally negotiated the final form of the bill with Senator [Robert S.] Kerr. But, as I say, Anti-trust stirred it up, started it. I talked to Nick all the way through. We had a very large part, I think, in influencing it.

GRELE: Excuse me, I want to change the tape.

LOEVINGER: Sure.

[Begin Side II, Tape I]

GRELE: Did the Anti-trust Division have reservations about the bill as initially proposed?

LOEVINGER: I've forgotten how the bill went in initially. It went through a lot of changes, and I must say I don't have a clear recollection of all of the metamorphoses.

GRELE: I was going to ask you what amendments in particular you were urging.

LOEVINGER: Well, of course, we started out with a big debate as to whether or not we ought to propose

government ownership, a government corporation.

GRELE: Who spoke against this and why?

LOEVINGER: Well, as I remember, Byron White said this was just impractical, that it would never get through Congress. I believe I was convinced of this myself. I have forgotten the precise thing. I think then there was debate as to who should own the stock, whether or not the stock should be publicly owned or owned by the carriers, and who should own the ground stations. I think as originally proposed, the Administration bill was for a publicly owned corporation with the carriers not owning any of it. Then the compromise finally arrived it was for fifty-fifty--50 per cent public ownership, 50 per cent carrier ownership. I've forgotten the precise position that we took on each one of these various things. It was finally hammered out as a compromise. As I say, Nick Katzenbach finally sort of agreed with Senator Kerr on this form of compromise. I believe that one suggestion that I made that was in the final bill was for the presidential appointment of directors of the Satellite Corporation.

About this time--or a little earlier than this, actually--I had started to do some research in the evolution of the corporation form itself. I gave a lecture at the University of Southern California on this, and this was subsequently published the title, "The Corporation as a Power Nexus." This was published, I believe, in The Anti-Trust Bulletin. This is mostly just a historical recounting of the various forms the corporation went through in its historical evolution to its present legal status. In the course of this it was interesting to note some of the things that had occurred at earlier stages. Among other things, it was notable that in the earlier form of development the corporation was much more an instrumentality of the government than it is today. In the early nineteenth century there were corporations set up by the United States, banking corporations and things of this sort, in which there was direct government participation.

this sort, in which there was direct government participation. It was this study that led me to the suggestion that if we're going to set up a special corporation by special statute, there's no reason why we can't mix some of these elements in and let the President have something to say about it, let him appoint a certain number of directors. I suggested this to Mr. Katzenbach. As I say, this was in the final bill, and the President does now appoint directors of the Communications Satellite Corporation.

GRELE: Did you confer with the White House on this?

LOEVINGER: Well, yes and no. The one direct call that I had relating to business from President Kennedy was on this matter. It was early one morning when a call came into the office, and somebody said, "Is Mr. Loevinger there? The President wants to talk to you." I remember my secretary said, "The President of what?" Of course we had lots of corporation presidents calling, and I guess there was a little consternation at both ends of the line. The White House operator said, "The President of the United States." And my secretary almost dropped the phone because this was a pretty unusual thing. Well, anyway, President Kennedy did get on the phone and talk to me, wanted to know what stage the bill was at and what was doing. At this point, Mr. Katzenbach had largely taken it over, and I told the President that Mr. Katzenbach was doing it, but answered the questions that he had.

GRELE: What questions did the President have?

LOEVINGER: I've forgotten precisely. I think in general he was less concerned about the details than with knowing whether or not we were coming to some agreement with the Senate so that the bill could be passed. I told him I thought we were, that Mr. Katzenbach was in the process of talking to Senator Kerr, and that I thought the differences would be hammered out and we'd get a bill. It was a fairly brief conversation. I did not confer with the White House on the details or any specific form of the bill. The White House for that purpose was represented by the Attorney General and by the Bureau of the Budget. Also, I

guess, by [Edward C.] Ed Welsh, who is head of the Space Council. But this drafting committee was chaired by Ed Welsh and a Bureau of the Budget man sat on it. I guess this was what the White House representation was. I doubt that President Kennedy concerned himself with the details of it. I think that he made an initial decision that this should be done privately rather than by government ownership. Then I think he simply left it for the rest of us to hammer out the precise form of the bill. I don't think he was concerned with hammering out the details of the legislation.

GRELE: Were you ever involved in any of the negotiations with Senator Kerr?

LOEVINGER: No.

GRELE: I was going to ask you what your impressions of him as a negotiator were. Moving on now, was there any attempt to place cooperatives within the purview of the anti-trust law at the time?

LOEVINGER: No, we did not undertake to extend the anti-trust law as far as cooperatives were concerned. But what did occur during the Kennedy Administration was an effort by cooperatives to get legislation which would give them greater exemptions. There was an effort made to get in some of the farm bills provisions that would have given much more extensive exemptions to co-ops. I don't want to take the time now--or to use up your tape --to give a little dissertation on the application of the anti-trust laws to co-ops. This is a complex subject, and there are extensive law review articles on the subject. We never undertook to extend the anti-trust laws so far as cooperatives are concerned, but we did oppose giving them any great exemptions.

On one occasion at least, I came into conflict with my very good personal friend, Orville Freeman, the Secretary of Agriculture. Orville and I had been law partners together and also personal friends for many years, are still very close personal friends. I have the highest regard for him both as a government administrator and as an individual--and great respect for him. But on this particular issue we

were in conflict. I talked to, I guess, his Undersecretary, [Charles S.] Charlie Murphy, and to various people from the Department of Agriculture, and we thought we had reached an agreement, but they. . . . It was a very interesting fight, actually--and largely a matter of public record. The Department of Agriculture was backing up what the big agricultural co-ops want. It sought essentially blanket exemption from all anti-trust laws for all agricultural co-ops, and we opposed this.

It got to the time when the agricultural bill was to be sent down by the White House to the Senate, and we hadn't reached an agreement on it. So it finally had to go to the White House. We ended up in [Myer] Mike Feldman's office. I believe that Bob Kennedy, Byron White, and I went over there and Orville Freeman, and I've forgotten whether Charlie Murphy went with him or not. But all of us were up there with Mike Feldman, and we started sort of introducing it. Bob Kennedy and Bryon White stayed there just long enough to tell Mike that I represented the Department of Justice and that they would back me up, and they left. So I was left in Mike Feldman's office arguing with my good friend Orville Freeman about what position the White House ought to take on this damned agricultural bill. Well, Mike more or less decided in our favor, and we agreed on what should be in it, on a letter, as I remember, that was to be sent up to the Senate saying. . . . Oh, I know. Somebody was trying to introduce an amendment in committee, and the question was whether or not we would oppose it. The form of the letter was agreed on in Mike's office. Then Orv got nervous about this. He called me up that night at home and said, gee, he just couldn't go along; he had to make his fight to the end. He was going to see the President. Well, I couldn't tell the Secretary of Agriculture that he couldn't see the President. I said, "Well, okay. Go ahead and do what you feel you have to do." And he did go to see the President. The President backed up Mike and the Department of Justice. Our letter did go up and, in fact our position did prevail. I think Orville Freeman was a little unhappy about this. But this was truly an Administration decision in the sense that Bob Kennedy participated, Mike Feldman, and finally President Kennedy himself. The decision was that they would maintain what exemptions the statutes and court decisions gave agricultural co-operatives,

but that they would not support, and in fact would oppose, any substantial broadening of the statutory exemptions. And I believe that this is what finally prevailed.

GRELE: I was going to ask you if this produced any personal conflict because of your long record with the Democratic-Farm-Labor Party and Minnesota co-operatives?

LOEVINGER: Well, I haven't heard of it.

GRELE: I meant personal conflict in terms of your own making.

LOEVINGER: Oh, yes. I've had two personal conflicts of this kind. You know, whenever a good friend, a political ally of yours takes a position and you feel compelled to oppose it, it's tough. It's a tough decision to make, not because of political pressures but because you just hate to be in this position. I am sure that Orv had good reasons for his position. I hate to take a position that would weaken his standing as Secretary of Agriculture. I think he's a great guy and a great secretary, and this was tough.

Another similar conflict that I had was with the so-called Quality Stabilization or Resale or Retail Price Maintenance Act. Senator Humphrey had been a great supporter of the bills to permit retail price maintenance for a lot of reasons, including his own personal experience as a druggist. He had gotten very sympathetic with the drugstore viewpoint. My position had always been against this, and I opposed it. I called Hubert on the phone after I was Assistant Attorney General and told him this was a position I would have to take both by personal conviction, because of departmental position and everything. He said very cordially and very candidly, "Look, I know your position, respect it. You know my position. I hope you'll respect it. You'll have to take the position you want, that you feel you're compelled to on this bill. I'll take the position that I feel I should take on it, and it won't interfere with our friendship or our support of each other on other matters. We've just got to take these things." On those two things, I had to oppose

very good friends of mine, men for whom I have the greatest respect and admiration politically and everything else. But that's just the way those things are. In both cases we discussed it, discussed our differences in a cordial fashion. I don't believe that it has interfered with my friendship with either one of them since then. But we were very candidly on opposite sides of those issues in both cases and recognized each other's position. Interestingly enough, I guess my position prevailed on both of them. My conviction and pleasure at political success is tempered a little bit by the fact that in both cases I regretted very much that close personal friends had to be on the other side. But I believe both positions were right.

GRELE: Your discussion of your relations or conflict, between the Justice Department and the Agricultural Department brings to mind another question. Did you have dealings with the FTC [Federal Trade Commission]?

LOEVINGER: Oh, sure. Sure.

GRELE: In general, what were the relations like between the Anti-trust Division and the FTC?

LOEVINGER: Well, there is a traditional rivalry between them because they both are somewhat in the same field. Each one naturally thinks that it's got a better approach. You know, it's old stuff. I think that Anti-trust traditionally feels itself to be the superior agency both in its mode of approach and the quality of its personnel. And I personally share that conviction. I personally feel--and I don't suppose that I would like to see this publicly broadcast although I don't mind having it recorded for history. . . . I don't think there is any comparison between the Anti-trust staff and the FTC staff. The Anti-trust staff--and I believe this is not a wholly subjective judgment--by and large the Anti-trust staff gets lawyers out of law schools that rank far above those that tend to be secured by FTC, at least as judged by academic ranking. However, they also cooperate. I knew [Paul] Rand

Dixon; I knew most of the members of the FTC; I think I know all the present members personally and well and have good personal relations with them. I've had good personal relations over the years with Rand Dixon. And aside from the inherent rivalry between the two, I think that we had very good cooperative relations. In fact during the period that I was there, there was an exchange of letters between me and Rand Dixon that defined the relative roles and the procedures to be followed and, I think, pretty well avoided any jurisdictional conflict. I believe that they are still operating under this understanding, under the understanding defined in that exchange of letters, which was made public, incidentally.

GRELE: Was your personal friendship with Senator Kefauver any help in dealing with the FTC?

LOEVINGER: Yes. Rand Dixon was his boy. Rand had been his chief counsel, and the fact that Kefauver was a friend of mine automatically gave me standing with Dixon.

GRELE: I don't have any more questions about particular cases unless you can remember other cases that you think would be interesting or significant that you would like to talk about.

LOEVINGER: No, I don't know.

GRELE: I just picked the most spectacular ones.

LOEVINGER: Yes, well, I'm sure those are the ones that are of most interest. I don't know. I don't immediately call to mind any spectacular cases to mention. Incidentally, I wrote an article entitled, "Anti-Trust in 1961 and 1962" that was also published in The Anti-Trust Bulletin, which reviewed the record of the Anti-trust Division during 1961 and 1962 since I left there in June of 1963. This encompassed the major part of our activity. It reviewed both the cases and everything else. If you're putting documentation in this library, I can give you a copy of this. This is a somewhat more detailed review; it gives statistics and . . .

GRELE: We can attach it right to the transcript.

LOEVINGER: All right, fine. I'll give this to you. One of the activities--I don't know if you have it down there--is this OECD [Organization for Economic Cooperation and Development] business that I think is significant.

GRELE: Okay, we'll come to that a little later.

LOEVINGER: All right.

GRELE: Were you at all involved in the Second National Conference on Anti-trust Problems in Consumer and Investor Protection?

LOEVINGER: Gee, I attended some of those things, but this doesn't ring a bell with me. I don't recollect personal participation. When was this?

GRELE: I don't have the date. I believe it was in 1963.

LOEVINGER: I don't have recollection of it.

GRELE: Do you recall what the genesis was of the executive order requiring the collection and publication of identical bids?

LOEVINGER: Yes. Following the electrical cases, there was considerable Congressional interest in this. I think Senator [Paul] Douglas, somebody else--I've forgotten who else it was--was interested. I think two or three. I think Wright Patman, Congressman Patman, was interested; Senator Douglas was interested; and several other Senators and congressmen were interested. They went down to the White House and said that the White House ought to do something about taking greater interest in the field. And the White House, as it normally does in every administration with such a demand, passes it on to the appropriate department and says, "Boys, here's the situation, what can be

done?" So we got thinking about it, figuring this out, and came up with this thing. This was drafted in the Department of Justice and sent up to the White House. The White House asked the congressmen if they thought this was a good idea. They said they thought it was great, and it was promulgated.

GRELE: Was there any discussion of seeking legislation rather than attempting to move through an executive order?

LOEVINGER: Yes. My view on that and various other analagous things was that we were a lot better off with executive orders than with legislation. You get legislation; in the first place, you kind of lose control of it, and various things are likely to be tacked on to it that are essentially extraneous. You're never sure of this. In the second place, you get legislation, and it's impossible to change. Conditions may change so much that the thing is simply archaic, and yet legislation will go on for years and years and become very difficult to change; whereas an executive or administrative order is much easier to change. And so, my advice on this kind of thing was, "If there's a choice between the two, for heaven's sake, let's get an executive order, get it out, then we've got some control. It's adaptable, you know. It's much easier to adapt to changing circumstances." This makes me think. . . . I don't know whether you have a notation there on the consent decree procedure.

GRELE: No.

LOEVINGER: Well, this is analgous, too. And this was wholly my own doing with the approval of the Attorney General, of course. For years and years there had been discussion in Congress about consent decrees in anti-trust. About 80-85 per cent of the anti-trust civil cases end up in consent decrees. This was more or less originated by Thurman Arnold, and the newspapers published little cartoons of Thurman Arnold as a king on a throne with a scepter in one hand and a whip in the other, whipping industry into line by using consent decrees. Now, on the other hand, the anti-trust advocates were worried that sometimes these consent decrees came to be private bargains between the Department of Justice and industry by which industry got a license to go and

sin no more, or to go and sin just a little. In fact, Congressman Celler had a big investigation of the A.T.&T. decree, and there were a lot of congressional charges that this was a sellout by the government. So that there was dissatisfaction with consent decrees from both sides, and there were a number of legislative proposals over the years that were intended to put some limitations on consent decrees: to require publication before they were entered, or public disclosure; public comment; public participation--a whole variety of proposals.

It was my opinion that there was some merit to some of these ciriticisms. I told Byron White and the Attorney General that I thought there was something to these, that I saw no reason why we shouldn't make some public disclosure and allow some public comment before consent decrees were entered, that they were capable of abuse, and that I thought that we ought to do something. I also argued that I thought this should be done by administrative order, that this is a more flexible device, that we could then, as experience accumulated, adapt the procedure to whatever our experience was, and that this would be preferable to a statute. So, I did in fact draft a proposed administrative order. After this was kicked around within the department, it was finally promulgated by the Attorney General.

The administrative order provided in substance for the filing of any proposed consent decree with the court thirty days before its entry. During this thirty day period, anyone who had any comment could file his comment with the court and at the time of entry could appear and argue to the court if the court permitted it. This put the control with the judge where it properly belonged. It didn't open up wide to let every Tom, Dick, and Harry come in, but it did provide the opportunity for any legitimately interested party to come into court. Well, this order was promulgated. For, oh, three or four months after this was didn't have any consent decrees. Apparently, everybody was scared stiff.

Then, as I recollect, we got a little one involving some New York tailors or something like this. A very minor thing which was entered, and nothing much happened. Well, then a few more came in, and we worked out a form of stipulation and started filing it. Within three or four months it didn't make any difference. Very soon, the dam burst. Pretty soon, the thing came to be accepted as perfectly standard. A few decrees

were entered in which some parties did have some comment, did come in, and the court did make minor corrections or amendments to the proposed decree.

Now, I believe it is accepted as standard procedure. In fact, the year following the promulgation of this thing we had more settlements than they ever had in any one year before. I don't think it's any impediment to consent decrees now. I think it is regarded as established procedure. There is no longer any demand for legislation on the subject. I believe this is accepted as perfectly satisfactory, and I think it would be almost impossible for an Attorney General to change this procedure now. I think this has now come to be regarded as something that is just an elementary safeguard that is accepted by everybody. This is virtually the equivalent of legislation from my viewpoint and, I think, represents a real reform that was introduced and promulgated by Bob Kennedy as Attorney General, and that stands as one of the contributions that we made.

GRELE: Moving on now, in early spring of 1963, you decided to leave the Anti-trust Division. Why?

LOEVINGER: I did not decide to leave the Anti-trust Division.

GRELE: You went with the FCC?

LOEVINGER: I was told to take the FCC job.

GRELE: Why?

LOEVINGER: I've never been quite sure. Bob Kennedy suggested this to me, asked me if I wanted this job. I said, "Quite frankly, no. I prefer to stay where I am. If I'm offered another job, I'd like a judgeship." I made no bones about it then, make no bones about it now. He didn't say anything more. I've forgotten the precise course of the conversation. I had three or four conversations with him. He said, "Well, Newton Minow, you know has told the President that he's resigning. We need somebody, and we need somebody with these qualifications: we want somebody who's got real prestige because this guy's made a big name for himself, he's going to be hard to replace. We want somebody who's identified with the Administration. We want somebody who's got an

anti-trust viewpoint because we think this is a viewpoint that needs to be more widely disseminated and more widely felt, particularly in the communications field. And we want to make a showing that the President is determined to improve the quality of personnel on the administrative agencies. We want somebody that will definitely bring this kind of stature and prestige to the agency." And I said, "I agree with all of those things, Bob. I think those things are fine, and I would not be so falsely modest as to deny that I have all these qualifications. But I think that there may be other people that have them. Frankly, I don't want the job. I wish you'd find somebody else. He said, "Well, we'll think about it."

GRELE: Was he then talking about the chairman of the Commission?

LOEVINGER: Well, when he started talking about it, I didn't know what he was talking about, except a replacement for Newton Minow. I don't know, he just. . . . I subsequently found out that what he meant was an appointment to fill out Minow's term, and that he had promised [E. William] Bill Henry that they would name Bill Henry as chairman. I guess maybe the differentiation between the two didn't particularly impress me at the time. In any event, he said, "Well, if the President appoints you, will you refuse or accept?" I said, "Look, I'm a member of the team. I'll do what the President tells me to." He called me in later and said, "The President wants you to accept this appointment." I said, "I guess this doesn't leave me much choice." I never sought it; I never wanted it; I don't want it now.

GRELE: What was your impression of work done by Chairman Minow when you came to the FCC?

LOEVINGER: When I came to the FCC? Well, I suppose I had the newspaper reader's impression that this is a red-hot guy who's stirring things up and doing something.

GRELE: Was this impression confirmed?

LOEVINGER: No.

GRELE: Why?

LOEVINGER: Oh, I think that Minow wasn't particularly interested in the administrative workings of the FCC. I think he was more interested in things that made headlines. I think that, as far as the operation of the FCC is concerned, it pretty much went to hell under his administration. Administratively, it was an awful mess.

GRELE: Did it improve under Chairman Henry?

LOEVINGER: Some.

GRELE: In general, what were the problems that you faced when you first came to the FCC?

LOEVINGER: I personally faced?

GRELE: That you faced personally, and then as you faced as a commissioner.

LOEVINGER: Personally, of course, I faced the problem of becoming acquainted with the Commission, finding out what it was, what it was doing. In order to do this, I undertook to study the Commission itself and the other administrative agencies. I got the annual reports of the agencies, read the statutes, looked up the statistics and everything else. In fact, some months later I made a speech in which I told people--I think it was the Federal Communications Bar Association--what I found out. I think five out of the six other commissioners attended, and at least four of them came up to me afterwards and said, "Gosh! Gee, that was very interesting. We didn't know all that stuff."

GRELE: Were these older members of the Commission or some of the younger members?

LOEVINGER: Both.

GRELE: What were the policy problems that you faced as a commissioner?

LOEVINGER: Well, the basic policy problem is what degree of influence or control the FCC shall exercise over programming of broadcasting, and what degree of intervention in this field is consistent with the First Amendment and with the social policy of free speech, which I believe is fundamental to our society. Oh, I don't know, there are a whole host of other problems, of course: the question of the economic structure of the broadcasting industry; the question of how you can fit all the demands for spectrum space into the spectrum; what you sacrifice; what you emphasize--and then the question of internal administration.

As I say, I may be partially responsible, but during my first year I was concerned in observing, among other things. I came on almost at the beginning of the fiscal year 1964; it started July 1, 1963, and ended June 30, 1964. Nobody around here really was interested in compiling secular statistics, you know. They had statistics that came out month by month--how much we were doing and so much of this and so much of that. They came out in a great big thick report that the commissioners never looked beyond the front cover of because it wasn't much to look at. Nobody paid very much attention. And I started saying, "Look at this. We've got to extract significant series here and see where we are going." Nobody else was interested, so I got my engineering assistant and we did this. We drew some charts and graphs. We started back in 1954 running up until the end of 1964. I discovered that by the end of 1964 the backlog of the Commission was at an all time high. There were longer delays, there were more old cases on tap at the end of 1964 than there had ever been before in Commission history. And I started raising complete hell about this. And just by virtue of the process of raising hell, people began to look at it and to pay some attention, and we began to reduce the backlog a little bit.

GRELE: In the latter years of the Eisenhower Administration, the FCC was sort of everybody's whipping boy, for a number of reasons. This seems to have ended or abated somewhat.

LOEVINGER: I think it ended. I think that they put some really unqualified men on the FCC under the

Eisenhower Administration. There was no doubt about this in my mind. The story of the influences brought to bear is a matter of public record, and I don't want to go into that. But I think these things justified some of the criticism of the FCC. However, let me pay tribute again to a Republican. I have previously mentioned that I thought Bicks was a competent guy who did a good job. What happened at the FCC was that when [John C.] Doerfer was shoved out, they put Frederick Ford in as chairman. And the reform of and improvement in the FCC began under Ford. Ford was a decent, honest, competent guy. Ford actually began the improvement of the FCC administratively and otherwise, and much of the improvement that took place during that period and under Minow is the result of Ford's effort. So I think in order to be thoroughly fair and non-partisan, I've got to give credit to these two guys who were in as Republicans and who did good jobs.

GRELE: What particular stance did the Kennedy appointees take within the Commission in terms of controls of broadcasters?

LOEVINGER: Well, there were four Kennedy appointments: Minow, Henry, [Robert W.] Cox, and Loevinger. And we split. I know most about Henry and Cox--and myself. Cox and Henry have been for. . . . Well, Cox has been the most avid for FCC control of programming. I have been strongly against it. My position is that it is the duty of the FCC to see that broadcasters operate their stations as instrumentalities, permitting a wide range of programming and opinion to be expressed, but that it is up to the FCC to keep out of programming content; that it is not the duty of the FCC to elevate the taste of programming or to influence the content or the views that are expressed on programming.

Again, I have expressed these ideas in a series of articles. I tend to try to formulate my ideas in coherent form and to express them in writing. I wrote an article while I was in Anti-trust that was published in Fortune, I believe in August 1962, entitled "Anti-trust is Pro-Business." This has now been reprinted in three political science anthologies that I'm aware of and perhaps more. I've written several articles on the FCC and programming. The most recent is the "Issues in Program Regulation" published in the FCBA Journal. I've

tried to express in coherent, logical form rather precisely what my ideas are on this subject so that this kind of swift, simple characterization is not a very good way to get at it. But, very roughly, Cox is all for FCC control of programming, and I am all against FCC control of programming. This is an unfair characterization of both our views, but we tend to be opposed on this, and we're both Kennedy appointees. Bill Henry was closer to Cox than he was to me. In the course of my period of service on the FCC I think that he tended to move away from Cox's position and toward the Loevinger position.

GRELE: You were appointed as special assistant to the Attorney General as a representative of the Justice Department on the OECD?

LOEVINGER: Yes.

GRELE: How did this appointment come about?

LOEVINGER: In the fall of 1961, Harold Levin, who is head of a division in the State Department that has to do with business practicies, came over to see me and said that the United States had just ratified a new treaty. Previous to 1961 there was the Organization for European Economic Cooperation which comprised all the major European countries. The United States had only an observer status in this. In 1961 we signed a new treaty that set up the OECD, the Organization for Economic Cooperation and Development. The United States and Canada were full members of this, as well as, oh, eighteen or twenty European countries and the European Community. The old OEEC had had a committee on restrictive business practices, and it was proposed to set up a comparable committee under the OECD. State felt that since the United States was a member of the OECD and since this was kind of a governmental operation, probably there should be governmental representation on this.

Restrictive business practices is, of course, simply another term for what we call anti-trust. So they thought this was properly something that Justice should be interested in and asked me how we would feel about being represented and participating. I said it sounded interesting, and I'd consider

it with the Attorney General and the Deputy. I talked to Mr. Levin. I think [Edwin M.] Ed Martin was then the Assistant Secretary of State for Economic Affairs or something; I talked to him, Byron White and to Bob Kennedy. And we agreed that this was something that we should do. We agreed that I would go over with Mr. Levin to the first meeting of the Restrictive Business Practices Committee of the OECD as a representative. Actually, the delegation wasn't structured. I think Rand Dixon also went to this. But we participated and were active. This seemed interesting and important, and the thing developed.

When I came back I set up within the Anti-trust Division a section of Foreign Commerce. I brought [Wilbur L.] Bill Fugate back from Hawaii to head this section. Bill had written a doctoral thesis that was published as a book on anti-trust and foreign commerce. Again with the acquiescence and knowledge of the Attorney General and Byron White, he became head of it. He sort of did the staff work for the OECD stuff and is still doing this, incidentally.

I became active in the Restrictive Business Practices Committee and was chairman of various committees and did various things on it and continue to do this. I made three or four trips a year to Paris in connection with this. Then when Bob Kennedy suggested I be appointed FCC commissioner, I said I hated to lose all my contacts with Anti-trust, that this exercise was sort of my baby anyway, that it was separable from the other part of Anti-trust and asked him how he'd feel about having me continue this. And he said, "Fine." So at the time that I was appointed to the FCC, the White House also announced that I was simultaneously appointed Special Assistant to the Attorney General for International Restrictive Business Practices and would continue to represent the U.S. on the OECD. I did do this.

I might mention that there were two special projects that I got done while I was there. OECD issued two publications, one a comparative summary of the world's anti-trust laws which, under various categories, compared the anti-trust laws of the world. This was my idea and suggestion, and I worked on this. And what was perhaps even more significant, it issued an International Glossary of anti-trust terms with agreed definitions in, I believe, only French and English.

But this too was one of my ideas. I was the chairman of the working committee, and oh, I'd say that 70 to 85 per cent of the work on this was actually my personal effort. This was completed largely during my first year on the FCC while I was representing Justice and was actually published, oh, the latter part of 1964. But these are tangible contributions that the Department of Justice and the Anti-trust Division, while Bob Kennedy and I were involved, made to this effort.

GRELE: In general, what were your attitudes toward restrictive business practices in Europe?

LOEVINGER: Well, of course, the European countries by and large had not had the anti-trust laws that the United States did prior to World War II. Interestingly enough, subsequent to World War II, European countries seemed to recognize that the American approach had much to commend it and started instituting anti-trust laws somewhat modeled after the American model. This was one of the reasons that this effort became, and is, more important than it previously was. I think the European countries are making great progress in this direction. Of course, their traditions and their conditions and their laws are different than those of the United States. However, they are moving in our direction. Again, I made a speech and wrote an article on this. It was published in The Practical Lawyer under the title "Anti-trust Laws of the World." It discussed the OECD exercise and the anti-trust laws of the European countries in comparison with those of the United States.

There has been a good deal of interest in Congress on this, as you probably know. The former Kefauver Committee--now the Hart Committee--has published a report on this. I cooperated with that committee; I talked with the staff members. In fact, Bill Fugate's section in Anti-trust compiled its own summary of the world's anti-trust laws. These were furnished to congressional committees. They have appeared in a couple of congressional committee reports, as furnished by the Justice Department. So that whereas in 1961, when I went in, Anti-trust was scarcely aware of the rest of the world. They were aware of the rest of the world only in the sense that occasionally some case involved foreign commerce, and somebody

would have to make a trip some place to get a witness or gather evidence. By the time I left, we had the most up-to-date compilation in Washington of the anti-trust laws of the world. We had information flowing in from all over the world. We were in touch with the anti-trust authorities of the major trading countries of the world. We had an on-going, informed staff working on this phase of it. The Department of Justice was really informed and really participating in the development of world anti-trust laws. And I believe this is the case today. So again, this was a significant change and a significant contribution that I believe the Administration made.

GRELE: Were you at all consulted as a result of your role in the OECD on the Trade Expansion Act of 1963?

LOEVINGER: I'm trying to remember. I don't think so. Actually, you see, really there was nothing to add. Naturally, I think it was a good proposal and a good act, and I would have had nothing to say except, "Go to it boys."

GRELE: I was just wondering if people in the State Department called you to see whether or not they should include some section on restrictive business practices.

LOEVINGER: No, I had discussions with the State Department on this, but, you see, this doesn't require legislation. This is not a matter of legislation. This is a matter of negotiation. In fact, I did, again with the knowledge of the Attorney General, talk to members of the EEC [European Economic Community]. This is more an EEC matter than an OECD matter. All of the OECD stuff is directed toward minimizing non-tariff barriers to trade. But in addition to this I went to Brussels, and I talked to Von der Groben and others on the EEC. In fact, he came to the United States, and when he was here, we arranged for him to have an interview with the Attorney General. He had a long talk with Bob Kennedy. There was just no division of opinion among any of us. It was just a practical question of how far and how fast you could

push on this. I talked also to--what's his name?--I think it's [W. Michael] Mike Blumenthal, who's [Christian A.] Herter's second on the negotiations, and to John Tuthill, who was then the Ambassador to the EEC, to John Leddy, who was the Ambassador to OECD after Tuthill moved from Paris to Brussels. The difficulty was then, as it is now, that the avenues of practical action were pretty difficult, and you couldn't push very far very fast. But we initiated the very most exploratory conversations on the subject. We didn't make much progress.

GRELE: Did you have any personal contact with the President other than the one time you called about the Communications Satellite?

LOEVINGER: Well, yes, I was in several conferences at the White House during the steel crisis. In fact, Life magazine published a picture of the Cabinet Room the day that news came that, I believe, Inland Steel was lowering its prices, and I am clearly distinguishable in the background.

GRELE: How did the President handle himself then? Was he calm, was he agitated?

LOEVINGER: Oh, he was. . . . I think that friend and foe alike must concede that John F. Kennedy was a gracious and graceful figure. He certainly handled himself beautifully always in my observation. If he had nothing else--and he did have much else--he had style and grace. These were outstanding characteristics.

GRELE: Did you see him other times?

LOEVINGER: Oh, yes, at White House receptions for the judiciary and the Justice Department and at parties. Yes, I've seen him. I can't remember the times. I've seen him a number of times. I've never had a close personal conversation with him of the kind. . . . My conversations were with Bob Kennedy. Now, on many occasions, Bob would say, "I'll have to ask my brother about that." Usually he'd refer to him as "my brother" rather than "the President". But I

always felt that this was the President's deputy. I had many conversations with Bob as long and intimate as this conversation with you where the two of us would sit down and talk together, but never with the President. I suspect that those of us who dealt with Bob, got Bob in lieu of the President.

GRELE: Can you think of anything we might have missed?

LOEVINGER: Oh, no. I say, you know, there are a great many things that have happened and a great many of personal things that were involved that don't seem to me to be of much historical consequence. I can't think of anything that really deserves to go on permanent record. I have a feeling that I've made some comments here that probably wouldn't stand publication.

GRELE: You're smiling as if you're hólding something back.

LOEVINGER: No. No, no. As I think about it, I think my comments about Mr. Minow's administration probably wouldn't stand publication at the present time. They're candid, and I believe they're true. But I'm not particularly anxious to start a hissing contest with anybody.

GRELE: Do you have any final comments?

LOEVINGER: God bless you.

GRELE: Thank you very much, sir.