

Berl I. Bernhard, Oral History Interview – JFK#1, 6/17/1968
Administrative Information

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Biographical Note

Bernhard, staff director of the U.S. Commission on Civil Rights from 1958 to 1963, discusses the often contentious relations between the Commission, John F. Kennedy's White House, and the Justice Department, especially after a report and recommendations that the Commission made about Mississippi, among other issues.

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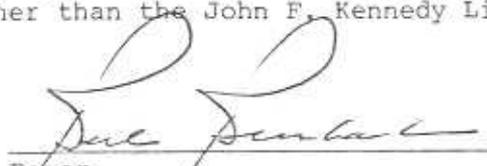
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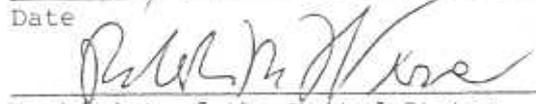
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of Berl Bernhard

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First of Two Oral History Interviews

with

Berl I. Bernhard

June 17, 1968
Washington, D.C.

By John Stewart

For the John F. Kennedy Library

STEWART: Why don't I start out by asking you, from your perspective in the U.S. Commission [on Civil Rights] during the campaign, did you see any really significant differences between a Kennedy [John F. Kennedy] and a Nixon [Richard M. Nixon] administration as far as, one, the Commission was concerned and, two, the federal government in civil rights in general?

BERNHARD: I think we all had the impression—when I say we, I mean some of the younger people on the staff—that Mr. Nixon would continue a rather slow policy on civil rights, not dissimilar to that we'd observed under Eisenhower [Dwight D. Eisenhower]. I also thought that there was real hope for basic change under Kennedy, particularly because of his willingness to listen to people like Harris Wofford [Harris L. Wofford, Jr], and to take a position in support of Dr. King [Martin Luther King, Jr.] during the period of the campaign, and also because of his willingness to speak out in favor of an executive order in the field of housing.

You may remember during the campaign he stated that Eisenhower had failed to do anything about housing when he could very easily have directed the various federal agencies to comply with a provision of nondiscrimination with a “stroke of a pen.” I really had the feeling that he intellectually understood the need for not only, I think, nondiscrimination in housing but the fact of a larger housing inventory than the country had had. So I think there was some feeling, particularly augmented by many of the people around him who had civil

rights commitments, that he would do a great deal more. That was a personal view at the time.

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STEWART: Was there any general policy as far as the Commission was concerned as to the involvement of the chairman or of members of the Commission in the campaign? Was there any understanding that they would....

BERNHARD: I think there was a general understanding that everybody who was a civil servant had a responsibility to stay out of the campaign. I think, realistically, they knew that some of us had personal commitments and that what we might do on the side from the standpoint of, well, providing information or opinion or judgments on civil rights to those working for one side or another might be overlooked.

STEWART: I was asking about the members of the Commission.

BERNHARD: As far as I know, at the time no member of the Commission was active outside of, perhaps, Robert Storey who was active in regard to Lyndon Johnson [Lyndon Baines Johnson]. He was on a lawyers committee and some other kind of citizens' committee for Johnson and then for Kennedy-Johnson during the campaign, so I think he was the one overtly committed member. I don't recall that the others took a role.

STEWART: Moving in to the transition, you said in the other interview that you did with Harris Wofford—and correct me if I'm wrong—that Kennedy's office didn't show any real interest in the Commission during the transition period and that you didn't actually see the President until February or March of 1961. You also said that you felt there was a lack of understanding of what had to be done in the civil rights area other than responding to the political needs of the situation. My question is, on what did you base this conclusion? Why did you feel, if you did, that the Kennedy administration would be overly motivated by the short-term political gains of a situation they might face?

BERNHARD: During the first fresh period of the new administration, I had talked with some of the people at the White House, the new staff people at the White House, about my own views of what needed to be done. It was made clear at that time that the person who would have the greatest responsibility in this area was going to be the Attorney General, Robert Kennedy [Robert F. Kennedy], and that at that time when we talked in the broadest sense—and this included Dick Donahue [Richard K. Donahue] and Fred Dutton [Frederick G. Dutton], and I talked to Ted Sorensen [Theodore C. Sorensen] briefly during the first few months—that they felt two things: one, that the climate wasn't right for basic legislative change, that we weren't going to have congressional action,

and second, that they thought a great deal could be done through executive action. The two things that I hoped for were in the area of housing and the area of federal

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employment and federally connected employment. But...

STEWART: Now wait a minute. This would have been during the transition or after the inauguration?

BERNHARD: Yes. It would have been after the inauguration. I'm sorry. If you were talking about transition right before that, there were just the most informal and very fleeting discussions. I'm really talking about late in January and February and March. I was told then that in the existing climate that what would best be done would be to assure the franchise for the Negro and that this would be the major effort of the administration. Since the Commission had issued reports in 1959 which covered housing, unemployment, the administration of justice and voting and education, my concern was on a much broader scale than that.

There was no philosophic difference. I never heard a basic difference in goals voiced, but there was a feeling that many of the Commission's proposals were unreal at the time, that there wasn't the kind of support or demand for legislation, and that if the Negro were enfranchised, that they would then have the power to independently assert and secure the things that they wanted and to achieve the goals that they sought. Our view was—and this was, I think, and it'll probably come up again and again, the cutting edge of disputes between the Justice Department and the Commission and the White House—that we were convinced of an interrelationship among all the different fields. They thought that the major effort was going to be in voting and the others would be peripheral to that. So there was a feeling, I think, on my part that we weren't going to initiate legislative action until there was a palpable demand for legislation. And that's why I harbored a feeling that it was going to take considerably more proof of not only the facts but of the creation of an emotional demand for change.

STEWART: Did you find out then or did you find out later exactly how this decision was made not to go for any legislation in 1961?

BERNHARD: I was never entirely sure about that. I'd understood that the Attorney General had discussed legislative possibilities with a number of people on the Hill, that there were discussions among the White House staff people with the Attorney General, particularly those responsible for legislation, and they thought that it would be a useless act to try to insist on legislation and that it would be doubly unfortunate because it would undercut efforts to achieve the goal through executive action. And really, for some time after that, this was the position which the administration adhered to, and it was the basis for, as I said previously, much of the friction between the Commission and the administration.

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STEWART: You met with the President—I'm not sure of the exact date; it didn't show up in the calendar—but early probably in February or maybe March with Chairman [John A. Hannah] and Hesburgh [Theodore M. Hesburgh]. Do you recall this?

BERNHARD: Yes. We had an informal meeting with the President. It had to do with the fact that Dr. Hannah had submitted his resignation, that I was the administrator of the Commission but in an acting capacity, that the President hadn't moved on any nominations, that there was a standstill in the work of the Commission, that Hannah was very concerned about it. And there were very real problems of Commission morale. They go back, in a sense, to the McClellan [John L. McClellan] investigation of the Commission and the fact that the Senate Committee on Government Operations issued a report on my predecessor which cast aspersions on the entire administration of the agency. The result was that Hannah was restless about being chairman of a commission without anybody with the authority to act. So we had an informal meeting with the President.

The President indicated an interest in Dr. Hannah staying and Hesburgh staying and the Commission remaining intact as it was. The President stated informally that he would nominate me as staff director. But that commitment was early, and the nomination didn't take place for another month or month and a half. Part of the reason is, it's a complicated business, that we had had our disputes, and I had particularly had a dispute with the Justice Department in the prior administration during our investigations in Montgomery, Alabama, particularly dealing with George Wallace [George C. Wallace] when he was a state court judge. We had what can only be described as a vehement disagreement with the Justice Department on how to go about that entire matter of trying to get the records from Bullock and Barbour County in Alabama. The result was that some of those people had complained to, I presume, Mr. Hoover [J. Edgar Hoover] about me, and of course that must have showed up in the FBI report. Also, in the December right before that I'd been in a political science seminar—I think it was the District of Columbia Political Science Association—and made some comments about the Bureau in the field of police brutality investigations. So the combination of those things caused a holdup.

Right after the informal meeting with the President that we'd had, I had a meeting with the Attorney General. We went into all of these things at great length. As a result of the meeting, he said that he was going to recommend to the President that he nominate me as staff director. So that took place sometime, I think, in the middle of March.

STEWART: As far as this meeting that you mentioned, was Dr. Hannah looking for anything specific as to how the President would view the Commission? Was he asking for anything very definite

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or was it just a.... Was he just looking for sympathy?

BERNHARD: No, he was looking for some very specific things. I remember he opened up the meeting by saying that he felt that during the last few years of the Eisenhower administration, as far as he was concerned, the Commission was a door mat, that it couldn't get beyond the front steps of the White House, that its recommendations were ignored, its counsel was ignored, and/or not even sought. Dr. Hannah stated that either the Commission should have the opportunity to express its views based on the information that it had or he thought that it was a wasteful thing to have around. Specifically, he urged that the President do something about housing, and that he improve what became known as, I guess, the Equal Employment Opportunity Committee of which Johnson, as vice president, was chairman: he felt that it needed more responsibility and it needed more direct push. Beyond that, the one specific thing that I remember, and I remember the President was interested in it, was that Dr. Hannah had commended him for elevating the problem of civil rights from a general governmental problem to one of morality during the campaign, that he was one of the first, as far as Hannah was concerned, to talk about civil rights as something that had to be done because it was right and not because it was politically necessary.

These were the key things that I remember he said, and then, in addition, Hannah said the Commission could be effective only if the President showed some inclination to support it, and he said, "Support it in terms of taking some of its recommendations and doing something with it." The President said he was going to look into it very carefully. One of the key things that came out of the meeting was that Hannah recommended that if the Commission and if civil rights were to be given more than the back of the administration hand, that there had to be a specific person named at the White House with access to the President to do it. The President said, "Well, I'm going to name Harris Wofford to do that. As a matter of fact, I'm going to do it today." As I understood from Harris, very soon thereafter, the same day he got a call from the President, and he said he was sworn in as special assistant to handle civil rights. So I think those were some of the specifics that came out of that meeting.

STEWART: Do you remember, did the President make a commitment as far as housing was concerned?

BERNHARD: The President said that he had determined and had publicly stated his position that the federal government had a responsibility in those areas where it had the power to insist upon nondiscrimination, and that he intended to do so. Dr. Hannah said—and I remember it very clearly because he used to say it all the time—that this was a matter of priority and a matter of

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urgency and he would hope the President could do it quickly. The President said he would do it as soon as he thought that it could be done and it would be effective, and he said, "It will be done." As you know it took some time before he finally got to it, but he did make a commitment to do it.

STEWART: But there was certainly no implication of when or...

BERNHARD: No, he only said he would do it when he thought it would be effective.

STEWART: Was there ever any question in your mind that Dr. Hannah would be reappointed as chairman? Was there any discussion that you know of, of finding someone else, of accepting his resignation?

BERNHARD: I had been asked by Harris Wofford, and by Fred Dutton, and I can't remember, who else, my impression of Dr. Hannah and whether or not he would be a good man to have remain. I made it clear that I thought Dr. Hannah, when he took the job, did not fully understand the scope of the problem, really sensitive to it, and didn't understand the substantive ramifications of it, but that over a period of two years or more since held been chairman he'd shown remarkable growth and understanding and commitment and that he was at the point where I thought that he could easily reach a peak of contribution to the administration and that he also would have, which I thought was important, the independence which might come from being a Republican in a Democratic administration in that he was not the person who would put politics above his commitments in this area. I would say overall that that's precisely how he behaved. I don't ever remember him making a decision because he thought it was going to help some Republican somewhere. He's really been, I think, remarkable in the job.

STEWART: Then to your knowledge there was never any serious consideration of replacing him.

BERNHARD: I, well, I don't know. There were some Democratic names that came up. I can't remember who they were right now as to whether they would be better or not as good or anything else. I don't remember that they were, at least as far as I was made knowledgeable, ever at the point where they were being considered as immediate substitutes. I think that overall there was a feeling the Commission ought to be left alone.

STEWART: Was there ever any discussion that the other members of the Commission should also resign or....

BERNHARD: Well, there really was. There was a question about the fact that at that time the Commission was evenly split, pretty much, between conservatives and liberals, and this inhibited,

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I think, the options of the Commission to really put forward a progressive program. And there was some feeling that.... And these questions were asked specifically about some of the members who were initial members of the Commission such as Doyle Carlton [Doyle Elam

Carlton], former governor of Florida; John Battle [John Stewart Battle], former governor of Virginia, may have already resigned, but there was a question about him.

All of the commissioners, as I recall, had submitted their resignations in a formal way as I guess they were supposed to do at the change of administration. But I think the real question was should the President upset the apple cart, having to go through the problem of confirmation of commissioners, or could the Commission get along as it was constituted. I think there was a feeling that if none of the members wanted to adhere to their resignations the administration might want to make some changes, but they never really had to get to that.

STEWART: Well, then Battle and Carlton did actually resign in the spring and were replaced by Judge Robinson [Spottswood W. Robinson, III] and Dean Griswold [Erwin N. Griswold].

BERNHARD: That's right, that's right.

STEWART: Well, let me ask you what role, if any, did you have in the appointments of Robinson and Griswold?

BERNHARD: I was asked about who we should get and who would be desirable to get. There was a provision in the act which said that no more than three members could be of any one political party. I don't remember how it all worked out, but there was an opening for a Republican. George Johnson had replaced J. Ernest Wilkins who was a Negro; Johnson resigned to go overseas for Dr. Hannah to head up a university in Nigeria that was under the aegis of Michigan State University. So what happened finally was that there were three replacements. Robert Rankin [Robert S. Rankin] came on the Commission.

STEWART: Oh, that's right.

BERNHARD: Robinson came on the Commission, and Griswold came on the Commission, so what happened was that there were two Democrats and one Republican. I was definitely consulted about Griswold. In fact, he'd been one of the people whose name I had recommended, and Harris Wofford and I agreed on that one. There didn't seem to be very much question but the President was interested in doing that. I was asked about the other appointments and I didn't really have a problem with any of them. I know the one individual that I had affirmatively recommended was Griswold.

STEWART: I assume it was.... Well, didn't the appointment of Judge Robinson sort of upset this other balance of three

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Northerners, the fact of the Negro Southerner in there? Was this considered a serious difficulty?

BERNHARD: Well, frankly, it was done with complete knowledge of what the administration was doing. It was done with the recognition that there would be a question raised about the balance of the Commission, not just in a theoretical sense but what kind of reports one would have to anticipate from the Commission in the future now that there would be a majority with Dr. Hannah. It was one of the things, incidentally, which Dr. Hannah had spoken about not only with the President but with staff members at the White House, that he was conducting a juggling act and that it was very difficult to continue to get out reports which had any meaning for the country with them always evenly split outside the area of voting. In the area of voting, by and large, all southern members supported widespread reform. Governor Battle did not always do that, but recognized that some changes had to take place.

So there was a recognition both of a right and a need, and I think, basically, the administration was quite pleased with the change that they were prepared to make. I should also say there was a recognition early on the part of the White House staff that the Commission might become a bit of a problem to them, but on the other hand it would be a political asset if the Commission came out with recommendations which were in a sense severe because whatever the administration then wanted to do, it could always point to the Commission and say we're really not as crazy as this wild bunch of people at the Commission. So they thought it would give them more room in which to maneuver and more leverage and, therefore, all these steps were taken with foresight.

STEWART: That leads into something I was going to ask you. In general, after your appointment, what kind of relationships were you trying to establish with the White House? Did you have some definite views in mind as to your own setup vis-à-vis people in the White House and in Justice?

BERNHARD: Well, I had some very definite views of what I would like to see done. I had seen my views develop because of observing the difficulties that Gordon Tiffany, my predecessor, had had. I can remember that he couldn't even get a telephone call through to talk to anybody at the White House. They'd never return his calls. I remember it took about a week for him to be able to talk to General Persons [Wilton B. Persons] about something very important to the Commission.

I decided that, while the Commission had to retain its objectivity and its ability to criticize the administration if it was going to be effective, it was a silly thing to have the knowledge that the Commission was picking up, the facts it was picking up, yet have its ability to counsel with the administration curtailed. And so I determined,

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whenever possible, that I wanted to work with the administration, with the Justice Department, with all the people at the White House staff on an honest basis. I had made up my mind that it was possible to be on the periphery of, say, carrying forward administration policies but nonetheless participating in some basic decisions so long, I figured, as they would understand that I also had my statutory responsibility to the Commission. That meant

independence and criticism. I didn't think this would be difficult. It turned out to be more difficult than I had anticipated.

STEWART: Did people in the White House warn you of this difficulty?

BERNHARD: We discussed it, sure. We discussed it rather openly. I had suggested, for example, that in many areas the administration would be well advised, as I saw it, to call upon the Commission for evaluation, for example, of Labor Department programs to find out whether or not there was equal access to training programs or redevelopment programs, and that they could get an independent judgment. We could do the same thing in terms of looking at the housing area, or whether or not there was ample compliance with the Brown decision of the Supreme Court in 1954. There was, I think, an initial willingness on their part to give it a try, but each time we came out either with interim reports or final reports and they were strikingly critical of what the administration was doing, I found that there was less of a willingness to bring me into the inner councils although I really believed that just because of basically good personal relations with some of the people at the White House and at the Justice Department I was able to get our viewpoint across whether or not it was accepted. But it was never a formal matter.

The only thing that was ever formalized with the Commission playing a key role was in the so-called formation of the sub-cabinet group on civil rights which was initiated while Harris Wofford was there, and then Lee White [Lee C. White] took it over. The Commission became really the staffing arm of that group to prepare agendas for meetings, to prepare factual data. This one worked well for a while. It fell apart eventually.

STEWART: Fell apart when Harris left or...

BERNHARD: No. Lee White did a superb job with it. What had happened was that as the problems accelerated in intensity, the opportunity for reflective programming became less real. And there became such a great urgency to get things done that it had to be elevated from kind of a sub-cabinet group to the cabinet officers themselves. And another thing had happened in the interim, too. The sub-cabinet group was getting larger and larger. Initially, it was a representative of the cabinet. But then each cabinet officer looked at the myriad programs that he had to administrate and wanted

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the heads of each one of those programs be part of it. And it became unwieldy. And the more people that were in it, the less it got done. And so I think that it was a combination of factors that finally caused it to lose effectiveness.

STEWART: To go back a bit as far as appointments were concerned. Do you people appoint the members, or did you, of the state advisory

committees? In general, what types of problems did you run into in these? Let me ask it this way: were there any changes in the practices under the Eisenhower administration?

BERNHARD: Well, we decided—and I guess I was the one who initially decided to recommend to the Commission that we take a total look at these advisory committees that had been established over the prior two years. Many of them were shockingly ineffective. I had the feeling that many had been staffed with cozy friends of some Republicans in Washington in the administration, that they just hadn't done any work. It's a very ticklish business, however. Once you create an advisory committee, you have created more woes than you can handle. The Commission agreed that they would allow me to make recommendations on what to do with whatever advisory committees I thought needed to be beefed up. But they wanted me to be sure that it was done without upheaval and public turmoil and, also, would like to be sure that we touch base with some congressmen and senators of the respective states and with administration officials.

And in point of fact, we did reorganize the advisory committees probably 50 percent. And we had brand new ones in many states. We had our problems even then because we did go to some senators and congressmen. But when you go to them and they make a suggestion, whether that person has any interest in civil rights or not, you fail to adhere to their recommendations at your own peril. We did a few times, and it caused problems. But I thought overall during the first few years, 1960 maybe up through '62 or '63 that we were doing very well with most of the advisory committees. A handful or more were totally useless. We got a new man in to head up that division. They began to hold some hearings. They began to exert some influence in their own states. And many of them became very critical of our Commission. In some sense, they were like we were to the administration, and I think gave us more room to maneuver, too. So I think it was helpful.

STEWART: How did the actual process of appointment go?

BERNHARD: Well, generally what would happen is we'd take them state by state. I'd make some recommendations. I'd point out to the Commission, in advance and in notice of meetings, that we wanted to make changes; I would ask for suggestions in various states from each of the commissioners; and we'd get suggestions from

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people in Washington. It was then done by appointment of the Commission. We did not have to clear them with the White House or with anyone else. And we would appoint a chairman and vice chairman for each of the committees, and they were to work directly with the staff and with me. And they were to be given a certain budgetary authorization to do various things. Some of them performed very effectively and some didn't.

STEWART: Well, did the White House get involved in many of these appointments?

BERNHARD: They generally got involved in terms of communicating with me when they'd find there might be someone on an advisory committee who was just personally anathema to them or who had fought them vigorously in the campaign or who, in their judgment, would be taking political stands on civil rights issues and not supporting the administration just on political grounds. They did make affirmative suggestions for various people. I think, more often than not, we paid a good deal of consideration and time to their suggestions, and we used many of them, appointed many of them. I know we didn't appoint all of them.

STEWART: Did you ever actually relieve anyone or could you do it by reorganizing the thing and easing people out that way?

BERNHARD: We did it by reorganizing because I felt under a very tight order from our commissioners that they did not want a great public clamor over these changes. When the committees had been set up initially, there was emphasis on bipartisanship on business and labor and religion and civil rights and non-civil rights representation. And any time you made one change, it was a question of the balance of that committee.

We had a particularly difficult time, I should say, in organizing advisory committees in the South. It was not a popular thing to be on one. And it was very difficult, as a result, to get balance. Conservatives just didn't want to serve. And we had problems with them, as we brought out later in Mississippi, where some of them had been personally attacked, their houses bombed; it was a most difficult problem. But by and large, I think, the administration left us alone, except there were a few people they were unhappy with. And we did have problems with the Texas advisory committee.

STEWART: Do you want to go into that?

BERNHARD: Well, what happened was that it was one of the committees that we wanted to reorganize because it hadn't done its work, really, in the past. We tried to deal with the problem in terms of trying to come up with new people who would work.

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And we, of course, checked with the Vice President's office and got a list of names. Apparently information was given to some people in Texas that these references and recommendations had been made. There were people on that list that we weren't very enthusiastic about. And then there was a question of who was going to be chairman and vice chairman.

And the upshot was that we pretty much took orders on the Texas thing because it became a very hot political issue. And there were some people we didn't eventually appoint, and that became a point of unhappiness. I think we finally got it resolved. But it made

operating with the Texas group a bit difficult, and it was never entirely satisfactory to our Commission.

STEWART: Do you remember any other mayors or governors that went to the White House with complaints about these groups?

BERNHARD: Oh, there were complaints made about them. We had complaints from Senator Talmadge [Herman Eugene Talmadge] about the Georgia group. We had complaints from some of the people out in the West that they hadn't been consulted and we didn't have a representative group. We had some complaints from California. Governor Brown [Edmund G. Brown] was unhappy about some people on it. I always had the feeling that no matter what the Commission did, someone was going to be unhappy about it. And if you didn't get to accept that point of view, it was a rather miserable life.

STEWART: There was a report, I don't know where I saw this, that in 1961 the Alabama group filed a very secret report regarding alleged linkups between local police and the Klan [Ku Klux Klan].

BERNHARD: Yes. Some of the committees, once we appointed them, took their responsibilities with just remarkable solemnity and concern. In Alabama, we received a report—which I think was predominantly done by an Alabama minister, a white minister—which did make allegations of connections between the Klan and both the state highway department and some local police department. And it was pinpointed to a specific case in Birmingham. We did go into this one, both with our own investigators and with the Department of Justice. I think it was one of the things that left the Commission somewhat unhappy in terms of our relations with the Department of Justice because we were told after they ran their investigation, through the Bureau, that we could not have access to any of the Bureau information and the Bureau findings, which I think we could understand in general terms. But since it had involved our Commission, there was a feeling that the Commission should know about it. This was the type of problem that came up with regularity. I know it was one of the jurisdictional disputes that existed all the time between ourselves and the Department of Justice in our respective areas.

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We also got reports from the Mississippi advisory committee even before they ran into physical problems down there of allegations of connections between the Klan and the Citizens Council and the voting registrar and the Board of Registration. And some of it was very valuable. And some of it was really amateurish. But most of it was done in good faith. They didn't, however, have the facilities to check out many things, and they had to accept on face value many allegations that didn't have substance. But, as I say, the advisory committees were spotty.

STEWART: As far as appointments to the Commission staff itself, were there many

referrals from the White House? Was this ever a problem? Or were there so few that....

BERNHARD: There weren't a great number. I would say during the period I was there, there were no more than maybe twenty recommendations for staff jobs at the Commission from the White House people. And these were from a number of different people. There were only one or two that they pushed with vigor. Out of all of them, I hired only one. And once having hired him, I couldn't get rid of him. He wasn't very competent. But they were quite good about this. They'd make recommendations, and if I came up with a pretty good excuse or explanation why we just couldn't use him, they begged off. But I think they got the impression very early that we had too small a staff and too much to do to be used as an area of patronage. I never had a really serious problem that I couldn't handle on that issue.

STEWART: In general, how independent were you and the members of the Commission in determining the areas that you were going to go into, leaving out the Mississippi situation for now. I'll get into that later.

BERNHARD: I'd say totally independent. We would get recommendations from many sources of what the Commission ought to do from our advisory committees, from senators, from congressmen, from White House staff people, from the Justice Department. But I think I know of no situation that the Commission went into in the entire time I was there where they didn't make the determination that it was substantively worthwhile in fulfilling its own statutory obligations. I don't think there was a single thing they went into that didn't have that behind it. It was a great tribute to Dr. Hannah.

STEWART: Was there any kind of a formal clearance process or.... I assume there was continual informal discussion about areas you were going to get into. But did, in effect, the White House hold a veto over possible areas?

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BERNHARD: It's more complicated than that. I don't think it was a question of veto or approval. What generally happened was that the Commission would determine what it was going to do. And I mean by that how much it would put into voting and investigations of voting, which was a mandatory responsibility; how much it would put into housing or education or justice or the American Indian or whatever it might be.

Where the rub came was in implementing these broad policy areas. For example, the Department of Justice, the Attorney General and Burke Marshall were unhappy at one point about the Commission's announced plans to hold a housing hearing in the District of Columbia. I don't think it was because of the substantive issue, the merits of the investigation, but it was because they felt that there would be more embarrassment than good coming out of it. They gave assurances and the administration were determined to do

something about housing. They felt there was no sense in holding up the nation's capital to national and international scrutiny in an embarrassing way. We fought that one out, and we held the hearing.

There was also, at another point, a question of our carrying forward a voting hearing in Louisiana. And this area of voting was where there was more basic friction than in any other. Well, the upshot of that dispute was that although we had already issued subpoenas for the hearing down in Louisiana, we delayed and called them all back because of requests from the Department of Justice.

STEWART: What was their reason?

BERNHARD: Well, it was because they were having problems down there politically. And it was a bad time. They were worried about the mayoralty contest, and they were afraid that our holding hearings would make the possibility of defeat for the progressive candidate far greater because he was then the incumbent. So they, therefore, had urged us not necessarily to kill the hearing but to postpone it indefinitely, which we did. We finally went ahead and held it. So the problem didn't arise in determining the broad areas of policy. It came in when we determined to do something which at that time was not considered to be politically helpful.

I remember we had another problem when we were going into the area of employment. And Secretary Goldberg [Arthur J. Goldberg] talked to me about his concern over our evaluation of the Labor Department, Manpower Development and Retraining Program. But I can't think of anything where the Commission didn't in some way or another fulfill its mandate because of these disputes. I think we did tailor them if we thought we could get the same result with less friction. But we never backed off from what we wanted to do. And, I think, this is a great credit to the Commission and I think, also a credit to the reserve of

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the White House not to interfere. I thought there was an area of general respect. Even though you didn't like what the other was doing, you let it go.

STEWART: What was the general philosophy of the Commission itself as far as trying to get some agreement in their reports or in their recommendations? I assume there was a feeling that if at all possible and we can get everyone to agree, let's try to do it, and then if we absolutely can't, then we'll have dissenting reports.

BERNHARD: Well, that's right. I think there was an overriding commitment on the part of the chairman that if the Commission would ever see its recommendation fulfilled, carried out, through executive action or legislation, it would have to have as broad geographic support as possible. And, therefore, an effort should be made to gain unanimity. The way it was achieved was a rather remarkable process and usually took weeks of full Commission meetings and arguments. But, basically,

they would ask the staff to come in with recommendations and get them in to each commissioner a few weeks in advance. And then Dr. Hannah would try to work with me in setting priorities on what we thought was most important and where we had to have unanimity and where, if the recommendations were strong enough, we could live without unanimity. And Dr. Hannah would then try to mold the strongest recommendations he could get. Sometimes he would come in with the strongest recommendation possible, recognizing it wouldn't get full support, and then there would be more eagerness, I think, on the part of some of the more conservative commissioners to go along with something less. But it is true that there was always this drive to gain unanimity.

STEWART: The Commission regularly met once a month or...

BERNHARD: Tried to meet once a month. There were a number of times when many of them were out of the country or something. But they did try to meet once a month. And beyond that, I guess I was on the phone with Dr. Hannah if not once a day, a few times every week on problems or just discussions with him. And he was very responsive, I think, to the problems we had.

You know, in this area, it's a lot easier coming into town and getting out of town than staying here and putting up with all of the fire that you are generally creating. I remember one time when Dr. Hannah was testifying before John Rooney [John James Rooney] on one of our budget requests, and he started out his comments with something like, "Well, as you know, it's difficult to get money for the Commission because it is a rather controversial agency." And John Rooney interrupted and said, "You telling me?"

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STEWART Was there ever any friction among the Committee members about the process of agreeing on recommendations? Aside from the substance that things weren't being presented to them in...

BERNHARD: Yes. I think that there was a growing feeling on the part of some of the more conservative members of the Commission that the staff people, whom I picked by and large, although I inherited a good-number, were too liberal and that they were being presented with selective and biased reports and that they were being asked to support recommendations which did not have the full breadth of possibility. Many of them felt this high degree of selectivity was calculated to make it very difficult for a conservative recommendation to be fully aired.

I think we tried very hard after we began to get this feeling that some of the commissioners were a little unhappy, to present a full range of options. But that was always difficult because I think many of the staff people—and I think I shared their view—felt that the facts warranted the strongest possible recommendations. And I talked to Dr. Hannah about this quite often. I know that some of the Commission members talked to staff people to try to get them on their own to come up with something different where they thought they had a more agreeable staff person. And this went on regularly. There was much jockeying

between individual Commission members and individual staff members which I couldn't really stop, although it did cause problems at times, big problems at times.

STEWART: You mean as far as the organization of the staff was concerned?

BERNHARD: Yes. When the Commission talked to me about being recommended as staff director, one of my problems was that each commissioner had a legal assistant. And these legal assistants didn't really report to Gordon Tiffany. They reported to their commissioner. And that was creating built-in strife. It was like a horizontal equivalence of having six or seven staff directors. And I told him it couldn't operate that way. It took quite a fight to get them to change that, but I finally got the Commission to accept my view. And most of the legal assistants ended up doing something else, although I kept a few of them as long as I could.

But there was still this proclivity on the part of some of the commissioners to deal with their former legal assistants to come up with separate reports and proposals. And they continued to come up with separate material at hearings and at meetings of the Commission. When they'd suddenly come up with a paper no one had ever seen before, we knew bloody well that the commissioner hadn't done that paper. But there was this kind of nuisance.

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I think overall, though, Dr. Hannah had a remarkable capacity to keep friction to a minimum and to keep personalities out of it. It was one of his strongest points. But there was a lot of jockeying. And they always thought that the stakes were very big. Maybe they thought the stakes were bigger than they really were because we were an agency of recommendation and not of direct action. But the press covered the Commission rather fully. And I guess some of the commissioners had a little difficulty when they went home to explain what in God's name they were doing with these wild recommendations. And they also, I think, knew the capacity of embarrassment and the power of embarrassment. And some of them were very concerned about that.

STEWART: That's something I was going to ask you. As far as relations with the press, was there any kind of agreement among the Commission members as to who would present the view of the Commission to the press? Or would they all be free to talk at their own discretion or what?

BERNHARD: There was, I think, a general understanding that when it came to the formal statements and pronouncements of the Commission, formal reports, John Hannah would speak for the Commission, that if any commissioner had strongly dissenting views, obviously, he should be enabled to speak his views. The press, being rather clever fellows, would always find some good excuse to have to get a response from another Commission member. They also were rather adept at violating something that I had put into effect, that I would speak for the staff, and I would only speak for the Commission with the authorization of the Commission.

But some of the staff people would talk to the press with promises of protection. And the result would be that there would be many stories going about which were less than the whole truth which we had to respond to. But the area was just so volatile and the interest during this period was so great that people seemed to be able to get information out of the staff no matter what I did. And if they didn't get it from the press, they could get it through a senator who would know someone on the staff or a congressman who in turn would talk to that person, and he, in turn, would talk to the press. So it was very difficult. There was a great discrepancy between the agreements of who would speak for the Commission and who, in fact, did speak for the Commission.

STEWART: Did the number of reports that were held secret by the Commission increase or change from what it had been before you became staff director? Let me ask it this way. Was this ever a serious problem of getting and holding so-called secret reports?

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BERNHARD: It was one of the most continuing headaches that I had. We, for example, had a firm policy that everything that was done was totally classified until released by the Commission formally. But recognizing that it was a bipartisan agency and accepting the fact that there were many very, very strong liberals who thought the Commission was too conservative—and I mean people on the staff who thought the Commission was too conservative—it was very difficult to number every carbon copy and everything else. And a good deal of information got into the public domain that the Commission had not approved that were maybe test recommendations for the Commission which came out to the press as formal recommendations of the Commission which caused me no end of grief with the White House and with the Justice Department and the Hill.

It was very difficult to keep these reports quiet, and investigative reports were just impossible. We didn't have a tradition, like the Bureau, of people trained in investigation and who knew how to keep their mouths shut and knew that that was an integral part of their responsibility. Some of them who were very, very bright came up with some good information either through use of subpoena or on their own. That stuff would suddenly become public currency. This was just a continuing headache. And I guess I was kind of brutal about it as we went along because I just didn't see how the Commission could have any dignity if it kept popping up with irresponsible recommendations or reports rather than more carefully weighed reports which it would get together and approve.

STEWART: Can you think of any examples of things that were really bad?

BERNHARD: Oh. There were some reports that were made by our investigators in Mississippi during 1961, maybe in early '62, and a report given to me which was draft report of problems in Mississippi dealing with voting, police brutality, and failure to comply with the school desegregation case. Some of the material was adequate, and some was just wild, undocumented, hysterical material. And I

read it all over. I asked for documentation. I never got the documentation. I had a great dispute with people responsible for the report. I told them I wouldn't submit it the Commission.

The result was that some of the people took that and gave it to someone in Senator Javits's [Jacob K. Javits] office and some other fellow. Javits' office, I think, was responsible enough not to use it. But one of the other congressmen did use it and talked about the suppression of valuable information by the Commission, which was just nonsense. But this was a hell of a problem.

STEWART: You mentioned your relation with the FBI. Did you ever have a real problem in turning certain types of information over to them or not turning it over?

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BERNHARD: Well, the problem was this. We didn't have a great deal to do with the Bureau during early 1960. But the Commission decided to go into these five areas which we've mentioned. One was the administration of justice. The Commission specifically determined to get into the area of police brutality. Now we'd started some of this, and we had some general information way back in '59. But in '60 we started going into it in a very formal, deep way. We began to pick up huge amounts of information, mostly received from the mouths of Negroes who had seen or alleged to have seen other Negroes beaten up or beaten to death. We were never absolutely sure of the facts in these matters because it's hard to get them with or without our subpoena powers. It's like each case requiring necessary proof for criminal conviction. We did the best we could. And then we got to the question of how we could substantiate this.

Well, we had a number of discussions. I had them with Burke Marshall, and I had them with the Attorney General about how much we could turn over to the Bureau and how much we could get back from them. The Justice Department was concerned because of the Bureau's policy: namely, that they never turn over their information, particularly their own data to others. But when we started trying to refine broad allegations into specific problems, we had to have the Bureau. We had to have their reactions, and we had to know what their policy was because one of the key issues was how did the Bureau relate to the chiefs of police in small towns in the South. Generally what we were finding was that the allegations had to do with an officer of a police department committing a murder or committing mayhem. And the Bureau had the responsibility to investigate that man. Now, if the Bureau is going in to try to give us information while they were investigating it creates a difficult problem for them.

We tried to work something out so they would investigate certain things. I guess they'd do it through the Justice Department. And we would at least get summaries to see how much their facts agreed or disagreed with what we found. We had a series of meetings with them—with Courtney Evans [Courtney A. Evans] particularly—in which we went over some of the allegations we had found. And some of the allegations affected the Bureau; the questions of whether or not the Bureau had only southern agents in the South working with the southern police chiefs, which was something that the Negro groups would tell us all the

time; whether or not they felt equipped to make full investigations when they had to work with the southern chiefs in the South; what was their policy. We went through all these things. Having done all these things. Having done that and then having looked at what we had and trying to refine it as best we could, we issued a Report on Justice in 1961 which, I guess, was the first time there had been even an indirect criticism of the Bureau by any federal agency.

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[BEGIN SIDE II, TAPE I]

STEWART: Were you dealing directly with the Bureau on all these things or to what extent were you going through Burke Marshall and the Attorney General or were you dealing directly with them?

BERNHARD: Both. We dealt with Burke Marshall regularly. I'd known Burke before either one of us was in the government. So I used to talk to Burke regularly. And Burke and the Attorney General had agreed to try to help in some of these investigations. They also suggested, however, that we try to work something out directly with the Bureau. And I thought that this would be a desirable thing to do. So we did both, really.

We tried to deal directly with the Bureau and with the Civil Rights Division and with the Attorney General's office. But after that report came out, Dr. Hannah got a very severe letter from Mr. Hoover disputing the findings of the Commission, disputing our reports on the policy of the Bureau regarding allegations of police brutality. The result was that Dr. Hannah and I had a meeting with Hoover's executive assistant to try to go over some of this stuff, to try to get some of the issues clarified. This was 1961. This was with a fellow named....

STEWART: DeLoach [Cartha Deckle DeLoach]?

BERNHARD: No. We had talked to Deke DeLoach during this period, on and off. But I think it was fairly clear that our relations weren't going to be good with the Bureau from the Commission's standpoint if we couldn't get more from them in terms of facts. And our feeling was that we ought to try to have a regular, formal liaison. They agreed. In fact, they had suggested that they would appoint one of their agents to be full time liaison with us, which they did after this meeting. I think the whole relationship improved after that. I honestly feel that we got cooperation from them and they got it from us after the nadir of the relationship had passed.

But it was very tense because as a result of Mr. Hoover's complaints about the Commission, we heard from many senators on the Hill. We had particular problems with Senator Talmadge because of a case called the Brasier Case in which a Negro was beaten to death by an officer in Georgia. And we had it in full detail in that report. It was one of the most brutal things we had encountered. We had demands from Senator Talmadge for all of our investigative material, who did it and why and all the rest. And with this criticism of Mr.

Hoover, we heard from many other senators and congressmen who were unhappy with the Commission anyway, and this reinforced their own misery.

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So I think after we passed over that problem, life improved. But I think there was always a lingering unhappiness on both sides. I'm not sure it wasn't inherent in having an independent commission in an area that had been for many years the exclusive domain of the Bureau and of the Justice Department.

It was the same kind of problem we had in the voting area. In that area we had a situation where the Congress had given a mandatory responsibility to the Commission to investigate all allegations of deprivation of the right to vote. And the problem was that the Justice Department was involved in the same area. And we did have continuing disputes for the first few years of the Kennedy administration. The Attorney General and Burke Marshall took the view that many of our hearings, many of our investigations, were making their prosecutions more difficult. And they may have been right. We took the view that the Commission must get the facts to report to the Congress. Recommendations for new legislation could not be made without the facts.

So there was an inherent possibility, more than that, really, almost an inevitability about clashing with the Justice Department. And we had, as a matter of fact, a meeting with the Attorney General in part because.... I think I initiated it. I had talked to Burke and talked to John Seigenthaler. I said that we were getting to a point of strain and gnawing unhappiness between ourselves and the Justice Department. I thought there was only one way to get it clarified and that was to have a meeting. The Attorney General agreed. The commissioners went up and we met. It was not an entirely satisfactory meeting.

STEWART: More specifically, these were conflicts between you people wanting to go into specific geographical areas or specific cases?

BERNHARD: Most specific geographical areas. The way the conflict came about was that we investigated voting in two ways: one, where we received complaints. We had a responsibility to investigate those complaints; second, where we looked at statistics which showed counties in Alabama and in Mississippi and in Louisiana where, for example, there were a majority of Negroes of potential voting age but not a single one or maybe 1 percent were registered to vote, we felt that this was enough of a presumption to look into that county. So we had disputes because, by and large, the Justice Department was doing similar things. People who sent complaints to us, who were smart, also sent them to the Department of Justice. And they were looking at the same kind of statistics that we were looking at. So there was just an inevitability of conflict.

I think there was a determination by the Commission that they did

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not want to interfere with suits which would bring relief. But at the same time, they had the feeling that suits which would bring relief in the long run might not be as important as

legislation which would make wholesale changes. So there was a dispute as to what remedy would be most effective.

And we had disputes on investigations in Alabama. We had disputes in Louisiana and in Mississippi, particularly. These persisted. That was why we had this meeting. I can't remember the exact date of it. But we went over our complaints, and we went over the Justice Department position.

Essentially the Commission reaffirmed what I stated previously to the Attorney General. I must say both Dean Griswold and John Hannah and Father Hesburgh spoke their piece. And I remember the Attorney General, Burke Marshall, John Doar [John M. Doar], John Seigenthaler were all there at the time. And the upshot was that the Commission would probably just have to go about its business of continuing its investigations and the Justice Department would go about its business and we would try to reduce the area of disagreement. But it all culminated in the problems over whether or not the Commission was going to hold hearings in Mississippi. It wasn't that problem alone. But that was reflective of, I think, the growing, almost inherent nature of the two bodies. When you think about it, Congress had just set up something which was calculated to cause misery to the Justice Department. And when you appointed commissioners, like the ones you know about, who were determined to carry out their responsibilities in letter and in spirit, there was this inevitability.

STEWART: Were there other formal meetings with all the members of the Commission and the Attorney General? Do you recall?

BERNHARD: I don't recall that there were more formal meetings with the full membership. There were meetings, I know, where Father Hesburgh talked with the Attorney General and where I went to see the Attorney General alone or where I went with one of the commissioners to see the Attorney General. But I think that was the major formal meeting outside of meetings we had at the White House where the Attorney General would come with Burke. But that was the one that was set up specifically to try to resolve the persisting and inherent dispute.

STEWART: These conflicts, of course, always became a matter of discussion in hearings for extension of the Commission. Did any of this information on these conflicts.... Naturally, a certain amount of it was in the press and was available to people in Congress. But was there more of it that came from, for example, people within Justice or within the Commission?

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BERNHARD: Well, that's hard to answer. I know some of the members of the Commission was being used to serve two purposes. One, when the Justice Department wanted to have legislation enacted during this '61-'63 period, they would rely upon findings and recommendations of the Commission. When they wanted to indicate the reasonableness of their position, they would pick something that the Commission had recommended which was more liberal to show that they, in fact, were being reasonable as opposed to the Commission.

I know there was a feeling on the part of the Commission that when we went to testify on certain bills, that some senators and some congressmen had information about these disputes, and we were asked about them. Whether they had picked them up from the press or whether they had been told about them, I don't know. They seemed to know more about things than they could gain from formal dealings.

I remember once testifying, and John Lindsay [John V. Lindsay] was there, and he raised some question as to whether I had discussed the question of extension of the Commission with the President. Well, in fact, I had spoken to the President about it very briefly, then with the Justice Department. Well, he seemed to know quite a bit about it and about the President's point of view. And that surprised me. It put me in a terrible position because I didn't know what he did know or didn't know. I didn't want to lie and so I just said almost nothing.

But I know there was a feeling on the part of some of the commissioners that more information had gotten to the Hill when we testified than they felt was desirable. I couldn't say that it came from the Justice Department. But we all knew, realistically, that there was no uncommon love on the part of Justice for the Commission. And we knew from comments made by lower Justice staff people to our lower staff people that they had received some pretty disparaging comments about the Commission from the Justice Department executives. You see, it was rather unfortunate because during this period the Justice Department was more vigorous than it had ever been in history. Burke had filed more suits in the voting area than had been filed during, I guess, the entire history of either the civil rights office in the criminal division or the civil rights division since it was started in '57. So it was one of those unfortunate things where we kept saying "more." They were doing more, but we thought it should be broader and not just more.

I remember talking to Arthur Schlesinger [Arthur M. Schlesinger, Jr.] about it. He used to call me when they'd yell at him about the Commission or someone would complain to him, and he'd call me up and ask me what it was all about. And he said, "Well, I don't know. I guess it isn't going to do anybody any harm to have a little dispute along these lines."

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STEWART: How did he get involved?

BERNHARD: Oh, I don't know. Only, I guess, because maybe Burke or the Attorney General may have talked to him, or someone over there said, "Why don't you call up that nut over at the Commission and see if you can cool him off," or some such comment. And so Arthur occasionally would call and ask me what were we doing about this or that. And he never seemed to be particularly concerned about the dispute. And I really believe maybe in the long run it did both institutions good to bring us at the Commission to a greater sense of reality in doing our job and accomplishing our mission, and I think it also did good at the Justice Department because they knew these difficult people over there might make very derogatory observations about the administration and about their work. So there was a certain goodness over there, but it wasn't always easy to endure.

STEWART: Let's get into the Mississippi hearings. Of course, the Justice Department violently opposed them. When did it first come up, do you recall?

BERNHARD: From the very beginning in my period with the Commission, there was constant talk of holding hearings in Mississippi. We had received more verified, notarized complaints from Mississippi than from any other state. It was determined after our first voting hearings in Montgomery, Alabama, in late 1958 and early 1959 that a major effort should be made in Mississippi. With all of its attending dangers and all the rest, it was determined that it was a responsibility that had to be fulfilled. I was then chief of the voting section and I was asked to come up with material on voting in Mississippi. And many of the other people were asked to look at specific federal programs. And so it really started way back in 1959 that the Commission became interested in Mississippi and felt that it could not avoid an obligation to do something there. Well, nothing was done for a while.

One of the things that runs through all of this saga is the problem of the extension of the life of the Commission because it was very difficult to make long-range plans when every year and a half you were going back to try to justify your existence. And I should have said that the commissioners never tried to do it. They'd just tell the Congress every time they'd come up, "If you want it, fine. If you don't fine." But it made it difficult to retain experienced staff people because if they were good, they could go elsewhere. And as soon as things looked like they were going down the tube, then everybody looked to bail out. So it was very difficult to lay these long-range plans on a chart of what to do. But we were authorized to investigate without our subpoena, just quiet investigation. And we did this for about a year. It was an on and off kind of thing. But a vast amount of information was accumulated, particularly in the area of

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voting and then in the area of education. We took a look at hospital facilities and segregation in hospital facilities, and we took a very hard look at the administration of justice.

I should also say that at one point when Herbert Brownell [Herbert Brownell, Jr.] was attorney general, and I guess more importantly when William Rogers [William P. Rogers] came in as attorney general, they had asked Harold Tyler [Harold Russell Tyler, Jr.] to call a meeting with John Hannah and some of the members of the Commission to talk about the Commission investigating the Mack Charles Parker slaying in Mississippi. There was a lot of dispute, i.e., well, maybe we couldn't do that, but maybe we could see their records and run an independent investigation. The Commission kept holding off and holding off until it really was sure it had the right kind of a case: And then we got into the whole problem of the University of Mississippi undergoing desegregation. Then came the Ross Barnett [Ross Robert Barnett] contempt hearings. And it was about this time that the Commission finally said, "Now, we've got up-to-date information. We've verified to our satisfaction. This is the time to hold a formal hearing." And they wanted me to talk with the Attorney General about I guess this was before the Barnett hearings came up. It was. And the Attorney General said

that he thought it was an inappropriate time; that they had many investigations of their own: that the climate would not be helped by our being there; that it was difficult enough get any convictions or any people registered; and that we would mess up the situation. Oh, and there was also a campaign of some kind of other. It may have been the gubernatorial race in '61 or '62. I don't know.

STEWART: Yes. I think they have off-year.

BERNHARD: Maybe it was '61, because I know '61 was the first year we made the major effort to do it. Well, we were off. The Commission was, at this point, still quite agreeable to holding off because they thought they were doing the right thing. As it progressed, step by step it built up, and further requests were made through me to the Attorney General and to Burke for the Commission to be authorized in the sense of directing them, but not causing a conflict—not causing a confrontation with Justice. And we never could get that. In fact, the Justice Department became really much harder in their viewpoint.

And about this time, we were getting worse and worse reports about the deteriorating situation from our state advisory committee people. In fact, they had criticized us formally for failing to come down to Mississippi. And the Commission was beginning to feel irresponsible.

STEWART: There was a public report by the advisory committee criticizing the Commission?

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BERNHARD: Yes, for its failure to come down there. With all of this coming together, the Commission just became resolute that it must fulfill that commitment. So I finally went over and had a meeting with Burke at some length. And it was then suggested by Burke that maybe I ought to put down in writing a request to the Attorney General and that he would respond to it. And so I did. I wrote a letter to the Attorney General. And I talked to him about it. And we got a letter back from the Attorney General saying that he remained of the view that this would not be helpful for the Commission to hold hearings in Mississippi.

Well, right about this time, the Commission was faced with this letter which I had, and we were holding urban area hearings in Indianapolis and the Commission met out there. And that was when they reviewed the reports, they reviewed his request that we not go down there, and they said, "Someone has got to shake up this administration in two ways: one, what is going on in Mississippi; two, the restrictive approach in the civil rights area of the administration, namely, its failure to look at the broadest use of federal funds particularly." And this grew out of reports that the Commission had from our investigators showing that many people were ill-fed and had poor medical care.

So the result was the Commission decided that, all right, they could not well go down to Mississippi and jeopardize the contempt trial of Governor Barnett or jeopardize any activity of the Justice Department for its activities went sour the Commission would be held

responsible. The Commission members determined they couldn't do that. So they decided to issue the interim report on Mississippi, and that was probably the single most controversial thing that the Commission ever did.

STEWART: Who was the real instigator, or was there a single instigator of this whole thing among the Commission members?

BERNHARD: I don't know if there was a single one. There was unquestionably a frustration which permeated the thinking of all of the commissioners. There was clear irritability on the part of some of them. And really it was an irritability at not being able to fulfill what they said they were going to do for the Congress and for the country. And I know that Dean Griswold spoke up very strongly at the meeting, and John Hannah did, and Father Hesburgh did.

There was unanimity that something should be said about the state of Mississippi. Now that is not to say that they all agreed right away on what should be said or with what recommendations, but there was absolute, as I recall it, commitment that they wanted to say something to alert people to what they believed were starvation

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problems, to police brutality and killings, to the suppression of all types of free thought down there and what had happened to the newspapers and people like Hazel Brannon Smith who had tried to say what was happening in fact and to Hodding Carter [William Hodding Carter, Jr.] and Hodding Carter III. Everything was wrapped up in one emotional moment when they all said, "We've got to say something." But there was a time period between when they committed themselves to this and when it could be done. People on the staff had had some ideas and they had research papers at Indianapolis. Some of the material was drafted during one night and part of the next day.

For example, I remember one thing they couldn't believe were reports that the Federal Aviation Authority had approved the construction of the new jet airport in Rankin County, which served Jackson, with segregated restroom facilities and restaurant facilities in the year 1962. And we investigated these reports. We had gotten copies of the plans for the airport, and segregated facilities were there although we had a dispute, I did, with Mr. Halaby [Najeeb Elias Halaby] later.

STEWART: He said it had been worked out, didn't he?

BERNHARD: Yes. But it hadn't been worked out. And the President asked me directly about it when I saw him with Lee White about this matter before it became public. What finally happened was that the Commission met and said, "We want something done." We prepared the report on Mississippi at the staff level. Every Commission member commented on it and modified it, complained or supported it. And then Dr. Hannah, as I recall it, got all of them to finally agree, and it was a unanimous report. And as you know, it asked Congress to look at the need

for withholding funds from the state of Mississippi in certain programs. It was the biggest bombshell I guess that we'd ever dropped.

I can't describe what life was like at the Commission for the next two months. But, as you know, we did see the President before the report came out. I met with the President and Lee White. The President fully appreciated the implications and the nature of it. I think his clear preference was that it not come out because he didn't think it was going to be helpful, and he thought it raised questions of power that he didn't have. And that was when he wanted to see Dr. Hannah. Hannah and I did see the President. Dr. Hannah didn't move away from the Commission report, and the President indicated that he was sorry he wouldn't. He thought we were off track on it, and he thought that it would be better if it didn't come out, but that he wasn't going to stand in the way of it. But then, as you know, a lot of other things happened after that.

STEWART: I'd like to get this straight. I think it's fairly important.

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I have a note of a regular Commission meeting with the president February 12. The actual report didn't come out until April 16. But on February 12, which was a meeting of the whole Commission with the President for a very short time—I know there must have been a presentation of one of the reports—the President said it would be dangerous to go into Mississippi or Alabama. And according to my notes, everyone generally agreed with this.

BERNHARD: Yes, that was when there was the crisis. My recollection of it was that.... Well, we went into a number of things, but my recollection on this one was that the President was speaking to what would happen were the Commission to come down and hold formal hearings at a time when there was the problem of desegregation of the schools. The question was raised as to the number of court cases which might be jeopardized by it. And I remember there was a discussion between the Chairman and the President and Dean Griswold and the President about the Commission's responsibility and how could the Commission explain why it had failed to follow up on all kinds of complaints and grievances. And the President questioned whether there were not other ways that could be worked out. And I remember him asking whether we had discussed these things with the Attorney General and with Burke Marshall. And I remember that Hannah indicated that this had been done, that I had done some of it, and that he had talked to Burke about it, but that the Commission didn't know how it could do all of these things and fail to carry out such a fundamental obligation.

I do recall this, that there was no thought, frankly, at that time that I'd heard voiced on the part of any of the commissioners to come out with a special report on Mississippi. And I don't think it had been thought about until we got more and more information and realized that the possibilities of our exposing what we saw as the discriminatory patterns in the state were being foreclosed. And that was at the Indianapolis meeting, whatever that date was.

STEWART: So at what point after this draft of the interim report was prepared was

the White House informed of what was going on?

BERNHARD: I remember what happened. I told Burke when he sent me the Attorney General's letter that I was leaving for Indianapolis for urban area hearings, that the Commission was going to be deeply upset, and that there was an indication from some of the commissioners that something would have to be done by way of disclosing the nature of the situation in Mississippi and that something more needed to be done than was being done. He asked me to please keep him informed of what the Commission was contemplating, and I told him I would do so within the limits of my obligations of

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confidentiality with the Commission.

After we had that meeting, I called him and said that it was my judgment that the Commission would be coming out with a report of some kind, that it had not been concluded in any sense. And Burke indicated that he would hope that the Commission would not see the need to do this, that the problems down there were severe enough without additional controversy. I told him that it was my judgment they probably would do it. I stated that one of the things that they were going to be complaining about was the question of the federal fund involvement in the state and the federal underwriting of patterns of segregation in the state. And Burke asked me to please, when I got back, keep in touch with him about what was going on.

Now within the limits of what I felt I could relate to him, I did relate it to him, and I think he in turn related some of it to Lee White. And Lee called me about it, and I met with him. I showed Lee a rough draft at that time. I told him Dr. Hannah felt we had a responsibility to talk openly with the White House about what we were doing. The Commission had its independence, and they did not have to accede to the demands of the White House if they didn't want to, but I thought we could not come out with a report and take the President by surprise when it was such a blast. And the Chairman agreed. He said that was fine. And Lee and I went over it in detail. Lee thought it left something to be desired, and he made some suggestions substantively. He wasn't sure we were correct factually. I told him any factual information he had or could get that would improve the report, we'd like to get because we didn't want to be inaccurate. And as far as the ambiguity about some of the recommendations which he had raised, I said we could try to straighten that out with the Commission. It was a good meeting.

Well, Lee had probably talked to the President, and the President wanted to see me with Lee. And we met and talked about it. The President went over the report and he asked any number of questions from, you know, similar to the ones you've asked about, i.e. who started this on the Commission and how did he ever get appointed to the Commission and did they really believe that this was going to help or was this just going to be disruptive? Was it going to cause more animosity than we were experiencing anyway? Did we really think the President had that kind of power? Had we done a legal analysis as to whether we have this kind of power? And had we talked with the Attorney General or with Mr. Katzenbach [Nicholas deB. Katzenbach] about it? He asked any number of questions about it.

He said he doubted the factual nature of particularly the FAA [Federal Aviation Agency] commitment, that he had talked to Mr. Halaby and Mr. Halaby said we were wrong. And I told him that we

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had the plans, and I thought we were right. It was a perfectly blunt discussion. It lasted maybe fifteen or twenty minutes. And then he said he really wanted to see Dr. Hannah. And so I went back. I think Dr. Hannah came back in the next day or two before we issued the report.

We did do some double checking on the facts. When the report came out, there was no real dispute about the facts, although there was a dispute about the emphasis of the facts. The question about whether children had been starving, whether or not the police had been unleashing dogs on a great number of people were disputed in terms of emphasis.

The disputes stemmed from the recommendations of the withholding of funds. It was a question of whether it meant the automatic withholding of funds from the entire state of Mississippi or whether it meant the conditioning of federal funds program by program to assure nondiscrimination and equal access to the program. And there was some dispute I think, within the Commission's mind as to what the intentions were. The Commission had thought, I think, that it had been fairly guarded in the way it phrased the recommendations. Namely, that the President investigate his authority to withhold funds. But no one paid any attention to this qualification. As far as the public was concerned, this is what the Commission had said, and that is cut off funds from Mississippi. And I guess we were blasted by.... I don't know who supported it. I really don't know who supported it.

At the same time the rather amazing thing was that there was hardly a voice of regret within the Commission. They believed sincerely that they could take the flak, that what it had done was to elevate the issue of the question of the discriminatory use of federal funds to a major public issue, that this is what the Commission should have been doing all along, that we should be proud of what we had done and not hang our heads. And as I pointed out to a number of them on the phone, it was easier to say that when you were in East Lansing than when you are in 1700 Pennsylvania Avenue, or 1701 where our offices were, right around the corner from the White House. And I said, "It's just a hell of a life around here these days." And I guess I made more trips back and forth to the Senate and to the Justice Department and to the House than I ever made any time in my life.

But there was little apology on the part of the Commission. And I always thought it was rather remarkably a credit to them because they understood that perhaps some of the language had not been as felicitous as it might have been in terms of precision because I think, really, some of the Commission members did think that they were talking about conditions of federal funds program by program. But there was an ambiguity in the way it was worded. And, you know, it caused them some.... Particularly when you remember it was unanimous and that it involved at least two good southerners on there, and it was shocking to many

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that they had done this and they did not oppose it.

But I think it was reflective of something that did a great deal of good: the question I've already talked about, whether or not we were going to continue to have federal funds used in a discriminatory way, but beyond that, I think, it raised the question of how bad the conditions might be in Mississippi to have essentially driven moderate men, by and large, to what looked like an immoderate conclusion. So I think if you can accept that and accept that they did not apologize for it, it did a great deal of good. And I think it had a tremendous amount to do—if it was not the precipitating cause, it was a major cause of Title VI of the Civil Rights Act of '64 and '65 on the nondiscriminatory use of federal funds. It became the issue after that. And so I don't want to pass judgment on it, but it did some good. It was a hell of a period, but it did much good.

STEWART: How visibly angry was the President in the two meetings you had with him?

BERNHARD: He was totally cool about it. He even joked in places about it. He never raised his voice. I guess I was more amazed at his remembrance of the statistics that he read the first day when we got back to the meeting with Dr. Hannah, because he had remembered every one of them and even made corrections. He was clear as a bell about how he stood. He was also clear that he was not going to direct the Commission what to do. His arguments were very forceful and, I think, very effective, but he did not at any time threaten anyone. It was more in sorrow than in anger. He was much, much concerned about his ability to carry out some of his domestic programs with this corrupting the atmosphere. And I think he used words very similar to that, that this was going to poison an atmosphere which was already pretty bad. But he did not direct anybody to do anything. He made it clear what he would appreciate, and I think his appreciation would have been rewarded, by having no report. But he did not order Hannah to do it. He ordered me to get Hannah down here, but he didn't do anything else.

STEWART: Were most members of the Commission surprised at the lack of any support that they got?

BERNHARD: Yes. I think they really were.

STEWART: I don't think even the *Washington Post*...

BERNHARD: No. The *Washington Post* gave us a backhanded support that we were well intentioned knaves or something. Roy Wilkins told me later, he said, "You know, it's the first time in my entire life that I've been left in the dust." And he said, "When that thing came out, I really read the *New York Times*. I couldn't believe it."

And he said, "I wrote a letter supporting it, and I didn't even know what to say to them because I felt like I was an old conservative dog." But we didn't get support. There were very few people, there were a few isolated people who said it was all right and it was deserved.

You see, one of the things that hurt us on it was the interpretation put on it. And I think, by and large, this was because of the President's reaction and the White House reaction. The press had gotten their information immediately from the White House when it was given to the President, because we were under the stricture when you give a report to the President, you don't comment on the fact that you've just given a report to the President. He comments on it.

So he released it, and he was the one who spoke with the press, and his staff people spoke with the press. The result was that they accepted the interpretation that what the Commission did was to say that the President had the power to do these things: the President should withhold funds from the entire state in Mississippi. And it was not the question of if he has the power, he should consider it, which was the way it was—or the Congress should consider it. Or it should be done on a program by program analysis. The most draconian interpretation was put on it. And we just couldn't rebut that.

After the President had talked to the press about it, they were asking me only antagonistic questions about why do we want to bring the state to its knees and throw people already in poverty into anguish. It was very difficult to straighten out after the first blast.

And, of course, the President was kind of funny about it. I don't know if you recall—right after a press conference, the day or two after it came out, he was asked how he felt. In view of his disagreement with the Commission, did he intend to withhold funds from the Commission? He said no, he hadn't given any consideration to that. And, of course, Bob Kennedy, in a press conference that week, vehemently denounced the conclusions of the Commission as not being helpful. So the whole atmosphere was one of.... The Commission really was kind of isolated at the time. We didn't get much support from anybody.

STEWART: Did you have any discussions with Lee White or Salinger [Pierre E.G. Salinger] over how this was to be presented to the press?

BERNHARD: Lee is one of the most remarkable people around. He can take the most difficult situations and turn them into kind of a cool, almost humorous occasion. And he suggested maybe we could sneak it in the middle of the night or maybe it would get lost in the mails or any other kind of thing. But he said that he thought we just had a simple responsibility, since it was a special report to the President, to give it to the President. And the

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President had to handle it as he would any other report.

But what was finally determined, when I reported that back to the Commission, was that it would be given to the President, but we would put a date for release on it, and that the President would know that the Commission intended to release it at a time certain so the President had it in advance, but we did put a release date on it. That's what finally was

determined, and that's the way it was done. The President had a few days to look at it, and then we were going to release it anyway.

STEWART: Was the original draft even harsher?

BERNHARD: No. It wasn't much different. There were a few words that were changed. The President had some suggestions on language which he thought would be more reasonable. There were a few factual things that we corrected, but it was not a great deal different.

STEWART: There was nothing in the substance of this whole matter, considering the possibilities, that were different in the draft?

BERNHARD: No. Let me say this: Lee White suggested some very explicit changes on the thing on the assumption, as they always put it, that the Commission was going to go ahead and do this anyway, for that's the way the Commission was. And Lee took other recommendations and made them quite explicit and asked me to have the Commission consider them, which the Commission did. And some resulted in a few language changes in it, but not any wholesale changes

STEWART: You said you felt on strong grounds on this airport in Jackson with the FAA. But yet Halaby claims that he was, in fact, ready to make an agreement or he was working out the situation. Was this all resolved to your satisfaction?

BERNHARD: The President, at the first meeting with Lee, said that he had talked to Halaby after Lee had told him what the report was about and that Halaby assured him it was not the case. The President asked me to be sure about that because he believed we were wrong. And it was then suggested through Lee that a fellow named Goodrich [Nathaniel A. Goodrich], who was the general counsel, would be the right one to talk with, which I did. I talked with him that night and told him we had copies of the plans, and our investigators had been down there talking to any number of people and we were absolutely sure of our position, and that we thought that the President had been misled by their statements that there was no such intention.

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STEWART: Where did you get the plans?

BERNHARD: Oh, the investigators got them down there. I prefer not to disclose how. It is a long story. But they did get them, and we had them. And the FAA was quite surprised. Mr. Goodrich was very surprised to see the plans. And he was very surprised when we pointed out that there were two men's rooms with two separate doors but adjoining and two ladies' rooms with separate doors and two coffee shops with separate doors and partitions. And we went through all this. And he said

that was wrong. In any event, Mr. Halaby called me and said that he thought we'd do a great disservice to them to do this, that they had been in touch with....

STEWART: The mayor?

BERNHARD: No, the congressman. It wasn't John Bell Williams. It was.... I can't remember his name right now. But that they had reached an understanding, in any event, that there would be no federal funds that would go into segregated facilities and that the state would have to put up any money for such facilities. I said, "Well, we have the information, and we believe it's correct as of now." They were unhappy with us. And we told them that unless we saw something else, we were going ahead, which is what we did. And they were very unhappy.

So that whole thing was probably the most controversial attack the Commission made.

If you forget the recommendations for a minute and just look at the documented factual material, there was only one mistake that was ever pointed out, factually in the five years I was there. And what bothered me was that there would be a feeling that the Commission's factual report was exaggerated or inaccurate. I mean, you could agree or disagree with the recommendations. That didn't bother me. I thought everybody should disagree if they didn't like them. That was no concern. But I was very proud of the fact finding of the Commission. I was afraid that we'd be written off and wouldn't have the credibility that we needed. And that was the only thing that ever really concerned me. It concerned me about the reaction to it more in terms of....

I was concerned that nothing would come of it because it had the appearance of being so immoderate. And I thought the interpretation of the report went beyond what the Commission had ever intended. And that was probably a language problem as well as who got to the press first and with what. As I say, in the long run, it did some good. I confess it was not my idea. I had reservations about various aspects of it. But in the long run it did some good.

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STEWART: Just one final question on that. Did you talk to the Attorney General soon after that? Do you recall what his state of mind was then?

BERNHARD: I talked to the Attorney General sometime after that. It must have been a month or two after that. And he was actually rather funny about it. He said something to the effect that he wanted to thank me for my helpful contribution to the equanimity of the country. And then he said he thought it bordered on the totally irresponsible, I think was his comment. And he wondered where in God's name it ever came from. I'd heard him mad on other matters when we'd been talking about specifics. But he wasn't mad anymore. He was actually kind of funny about it. But he made it very clear that he disagreed with it. He thought it had been the wrong thing to do, and he saw no good coming out of it at all. I think it set back relations with the Justice Department as far as they could be set back.

[END OF INTERVIEW #1]

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