



## EDWARD M. KENNEDY ORAL HISTORY PROJECT

### INTERVIEW WITH DAVID BOIES

September 23, 2008  
New York, New York

#### **Interviewer**

James Sterling Young

Index: page 19

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TRANSCRIPT

INTERVIEW WITH DAVID BOIES

September 23, 2008

**Young:** This is an interview with David Boies, in New York. It's September the 23rd. Thank you for giving us this time.

**Boies:** Absolutely.

**Young:** Why don't we start out with you just talking about whether you knew the Senator before you joined his staff in 1978, whether you'd had any contact with the family. You did work, I think, as a younger man, in the Robert Kennedy campaigns.

**Boies:** I did.

**Young:** And then how you came to join up.

**Boies:** Prior to 1977, I obviously knew of the Senator, but I did not know him. I had met his brother, Robert Kennedy, on a couple of occasions, only in the context of being a young person who was working on his campaign. I admired the work that Senator Kennedy was doing, and I knew a number of people who either were working or had worked for him, but I had never actually met him in person prior to 1977.

In the fall of 1976, I started a trial in Los Angeles, an antitrust trial where I was representing IBM, and the plaintiff was a company called CalComp. Shortly after the trial ended, I was still out in California. I received a call from Steve Breyer, who was then the Chief Counsel and Staff Director for the Senate Administrative Practices Subcommittee, of which the Senator was then Chairman. It had been announced that the Senator was going to become Chairman of the Senate Antitrust Subcommittee the following fall. I think Steve, at that point, needed to return to Harvard to maintain his tenure. He was leaving. I'm not 100 percent sure that was the reason he was leaving, but that's what I recall. It was clear, in any event, that he was not going to continue as Chief Counsel and Staff Director of the Antitrust Subcommittee, and that he was undertaking a search for Senator Kennedy to find somebody who would.

**Young:** Had you known Steve Breyer?

**Boies:** I had not known him. I think I may have met him, but I had not known him other than perhaps to meet him at a conference. One of the issues that was going to be at the forefront of Senator Kennedy's economic agenda—he obviously had a great many agendas in terms of civil rights and immigration reform and Criminal Code reform and the like—but one of the issues that

was going to be at the forefront of his economic agenda in the fall of 1977, and indeed had already begun, was his emphasis on deregulation. He had been working on airline deregulation, and he was going to tackle trucking deregulation.

When I was a young lawyer, ten years or more earlier, I had written an article in the *Columbia Law Review* on deregulation, and in particular on trucking deregulation and the need for it. Steve mentioned that article in his discussions with me, and Steve knew of my work in antitrust. I had concentrated, to a large extent, on antitrust cases. And, of course, the IBM case at that point was the largest and most significant antitrust case going on.

He asked me if I'd be interested. I said I would, but there was some work that I needed to do in New York, on the government case against IBM. The CalComp case was a private antitrust case in California. I had moved out there for essentially the school year. The trial started, I think in October, but I had a 16-year-old son, and rather than leave him at home or put him in school for four or five months, we moved out there for the entire school year. So even though the trial ended at the end of February, I was planning to be out there in March, April, and May, and then I needed to come back and cross-examine a key witness in the government antitrust case that was pending in New York. So I said I had some commitments that I had to fulfill, but that by the fall, I thought I would be free. We talked about my coming to Washington and meeting the Senator. It was either late spring or early summer when I flew to Washington to meet him and to meet other members of his senior staff, including Carey Parker, Tom Susman, and others.

After meeting with him and listening to his plans for the Antitrust Subcommittee, I was very enthusiastic about doing that. However, it was a little bit complicated. I had become a partner in my law firm, which then was Cravath, Swaine & Moore, at the end of 1972. So I had been a partner at that time only about four and a half years, and there was some reluctance on my part to leave and some ambivalence with the firm about my leaving to go down to Washington so soon after becoming a partner. But this was something that I was very interested in, both from a policy standpoint and from the practical political standpoint of having the opportunity to work directly with Ted Kennedy. So the firm and I managed to work our way through the complications.

**Young:** It's called a sabbatical in my notes from the firm.

**Boies:** Right.

**Young:** You hadn't decided what to do for the long run, had you?

**Boies:** No.

**Young:** This was something—

**Boies:** This was something that I was interested in doing then. I was agnostic about what the future would bring. I started working, actually part-time that summer, in July, and we actually had some hearings, I think, in August and September.

**Young:** Was this on deregulation?

**Boies:** This was primarily on deregulation.

**Young:** Airline or trucking?

**Boies:** It was on both airline and trucking. I remember I had a meeting with the [Jimmy] Carter Administration people, who were responsible for airline deregulation, in June.

**Young:** Would that have been Fred Kahn?

**Boies:** Well actually it was Don Flexner, who was heading the Department of Justice's Deregulation Task Force.

**Young:** Yes. So it was the Justice Department.

**Boies:** Well, we actually met in the White House. It was also Mary McInnis, who is now my wife [now Mary McInnis Boies], who was the assistant director for the domestic policy staff in charge of airline and trucking deregulation, working with Stu Eizenstat. It was people who worked for either Don or Mary. It's an interesting arc, because Mary and I then got married, and Don became my partner here. So there's a fair amount of history in terms of our connections to deregulation.

**Young:** Also with Kennedy, but also with Carter.

**Boies:** Also with Carter, yes. It was—

**Young:** You know, at a time when they were—

**Boies:** It was a very interesting time for all of us, but particularly for Mary and me. We started dating soon after we met and were dating throughout the contest between our two principals. I finished my work in New York in the fall, and then I was full-time in Washington by the end of 1977 on the Antitrust Subcommittee. We had a number of significant legislative and investigative initiatives in the antitrust area, and at the same time, we were spending a substantial amount of our time on trucking and airline deregulation, which strictly speaking are not antitrust issues. They were competition issues, and the principles that we were trying to advance in deregulation were really the pro-competitive principles of the antitrust laws, but they were not strictly speaking antitrust statutes, and indeed the committee jurisdiction was in the Commerce Committee. So we had the sometimes complicated political issue of dealing both with the White House, which had its own agenda, and Senator [Howard] Cannon in the Commerce Committee.

**Young:** Who had the jurisdiction.

**Boies:** Who had the jurisdiction over the bill. Fortunately, Fred Kahn was enormously helpful in smoothing things with both. He and Mary also were very helpful in working both with the administration's constituencies and with the Commerce Committee constituencies, so that we developed an effective bill.

One of the things that I saw in the Senator was his ability to draw people together and to gain a wide range of support for this deregulation legislation. He was able to reach out to Senator Cannon, with whom he had a number of differences, and over time gain Cannon's support for the legislation. The Senator was able to bring people from the Republican side together, in favor of

that, as well as some Democrats. The coalition that he built, which included consumer groups and the Chamber of Commerce, was a very broad coalition. One of the things that both he and I remarked on from time to time when we were speaking to groups is that it was unusual to find a legislative initiative that was supported both by the Consumer Federation of America and by the Chamber of Commerce, both by the National Association of Manufacturers and by Ralph Nader.

**Young:** Ralph Nader, because as you mentioned earlier, this was apparent to all at the time, that this wasn't a liberal agenda against big business, but it was for competition.

**Boies:** I think that's right. I think that's exactly right.

**Young:** Did you talk with Kennedy about this when you were—did he interview you?

**Boies:** Yes, he did.

**Young:** And did he tell you what he wanted?

**Boies:** Yes. He viewed this as a pro-consumer initiative that would also free businesses from unnecessary regulation. He was able to understand that it's not every regulation on business that's good for consumers, and that the kind of regulations that government ought to be interested in are the regulations that are good for consumers, because regulations are designed to protect the public, to protect the consumers. And you can sometimes get government regulations that are so antithetical to competition that you don't get businesses actually serving the consumer constituency. I think he recognized that.

He also recognized that one of his natural constituencies, which was labor, would be either ambivalent or strongly opposed, depending on how close they were to the airline industry. The unions in the airline industry were strongly, intensely, opposed to this legislation. Among the labor movement generally, I think the reactions to the idea ranged from suspicion to hostility. I think the further you got away from the actual airline industry, the more unions were able to look at it objectively, from a public policy and consumer oriented point of view.

**Young:** Would that have been true of the Teamsters?

**Boies:** No. The Teamsters were one of the key trucking unions, and they saw the deregulation movement as something that directly threatened their union objectives. And so it was not just the Machinists, who were very active, but also the Teamsters and other unions involved in the airline industry and the trucking industry. The Senator understood both, that this was his natural constituency, but also that in this particular instance, the narrow interests of those unions ought not to trump the broader public interest. So he was prepared to confront the unions, in a context in which there was relatively little, if any, political advantage for him. There was no public outcry for airline or trucking deregulation. It was strongly advocated by academics and people like me, who had written analytical articles, but the average voter did not have this on his or her radar screen.

So the easiest thing, and to some extent the politically safest thing to do, would have been not to get involved in it, because it was not something that really advantaged any one of his natural constituencies. It's not something that any of his supporters were interested in or benefited from,

other than just as part of the general public, and he knew he was going to take a substantial amount of heat from people who had been his longtime supporters and were his friends, and with whose interests he strongly identified.

He strongly identified with unions and the role unions had played and continue to play. He was and is a very strong supporter of unions and of working men and women, and so there was both a personal conflict as well as a conflict with an important constituency. One of the things that most impressed me when I went down to interview with him was the way he thought his way through those conflicts, in terms of both recognizing them and also balancing them against what he thought of as the broader public interest of freeing businesses from unnecessary regulations that were impeding what should be their primary function, which is to serve consumers.

**Young:** So he had already thought this out, is that your impression?

**Boies:** He really had. He really had understood the issues.

**Young:** At least the landscape.

**Boies:** He understood the basic principles, I think, based on the work that Steve Breyer and others had done with him. One of the ways he operated generally was to collect real experts in any field and work with them, listen to them, question them, until he really understood what the issues were. There wasn't anybody that I saw in the Senate who worked as hard as he did at understanding what the principles were, what the facts were, what the policies were, and very few, if any, who were as objective at sitting back and putting those together. He could step back from a problem and really analyze it, and that's what he had done in deregulation.

While deregulation, I think, will never rank nearly as high among his accomplishments as what he has done in civil rights, health, education, welfare reform, Criminal Code reform, immigration, policy issues like that, it I think gives you an interesting insight into the way he thought and analyzed and operated, because it was a very difficult economic and regulatory issue. It was one with respect to which there was, I'd say, no political upside. There was a lot of political downside. There was the personal conflict of finding himself at odds with people whom he wanted to support and with whose interests he identified, and yet he thought it through, analyzed it, decided what the right path was, and then brought together this coalition to get it done.

**Young:** Did this figure in his thinking, that President Carter also was in principle?

**Boies:** Yes.

**Young:** And more than in principle.

**Boies:** Yes.

**Young:** For deregulation.

**Boies:** Absolutely. Not everybody in his administration.

**Young:** Well, of course.

**Boies:** One of the interesting conflicts was between the domestic policy staff and the Secretary of Transportation, who strongly opposed deregulation. President Carter was also very much in favor of it. He also had thought it through, understood the important public policy aspects of it.

**Young:** So these two people had started out on their own.

**Boies:** Yes.

**Young:** This was not an idea that developed jointly.

**Boies:** No.

**Young:** Out of some kind of cooperation or consultation. It certainly wasn't in the Democratic platform.

**Boies:** It was certainly not in the Democratic platform.

**Young:** So yes, this again makes it interesting from the Executive, Congressional side also.

**Boies:** It was.

**Young:** And that undoubtedly, Kennedy's—the idea of running for President had never entirely left him, and it was coming more to the floor, I think, in the '70s. So, are you saying there was no political upside to this for him if he were seeking to build a candidacy?

**Boies:** Exactly, because there was no political constituency that was advocating it. There were many political constituencies who were opposed to it. It required him to work cooperatively with President Carter, during a period of time when their political interests were diverging, and where their vision for the country was diverging. Again, I think one of the interesting insights that you get from watching him in that period was his ability to reach across all sorts of aisles, to Cannon, who is in a different committee, to Republicans in the Senate, to President Carter, from whom he is increasingly divergent but who has a common interest in working on this issue. And it was for me, as a young lawyer, a great opportunity to get a front row seat and participate in that.

**Young:** Yes. There are several other issues like this that are not big ticket items in terms of what he is reputed for, or they haven't endured as long as the healthcare policy perhaps, but they are very revealing and indicative of the way he works. This is a good example of that.

**Boies:** I think it is. Another one that is an issue that has some parallels is Criminal Code reform.

**Young:** Yes.

**Boies:** Again, this was something that he spent and that we in the Judiciary Committee—because I had moved from Antitrust to Judiciary by then—we spent an enormous amount of time and attention and effort on. Yet again, it was not something that had a strong political upsurge. You

didn't find people marching for Criminal Code reform. It was something, though, that he felt was very important to the quality of justice and to the implementation of the justice system.

**Young:** Hadn't there been a commission earlier, the Brown Commission, something like that?

**Boies:** Yes, there had been, there had been.

**Young:** And so this issue had been around a long time.

**Boies:** Right.

**Young:** And never gone anywhere.

**Boies:** And never gone anywhere, and it really took somebody of his stature and energy to pick it up. One of the things that was amazing to me, particularly when I moved from Antitrust to Judiciary, was how many major initiatives he was working on at the same time, and the degree of knowledge and analysis that went into every one of those issues. I would sometimes go out to his house on Chain Bridge Road early in the morning, to meet with him and then ride in with him, and we would be talking all the way in. Sometimes he was driving and paying maybe more attention to talking than he should have been when he was driving. Sometimes somebody else was driving him, and he was giving the person constant directions as to where to go to get around this traffic—and at the same time, he was carrying on very complicated discussions about antitrust policy or the Illinois Brick case or airline or trucking deregulation. And at the same time, I might be out there late at night with a group from the staff, briefing him. He would often bring in people from universities or business who had particular expertise, to brief him on a subject. Whenever he would get into a subject, he would try to begin by collecting the leading experts in the field.

**Young:** Were there any issues dinners out at the house?

**Boies:** Yes.

**Young:** On which of the—?

**Boies:** Well, on several of them. We certainly did it on deregulation, we certainly did it on immigration issues. I can remember those and I can remember also, one of the issues was the division of the old 5th Circuit. That was a controversial issue because everyone was very concerned that if you split off the more liberal judges who were in one part of the old circuit—

**Young:** Was Florida?

**Boies:** Florida is in the 11th Circuit. The 5th Circuit was split up into the new 5th Circuit and the 11th Circuit. Florida, together with the eastern portion of the old 5th Circuit, became the 11th Circuit. There was a lot of concern about what the impact of that would be on civil rights enforcement, which in the late '70s was still a matter of great concern to the Senator as well as to many of the rest of us.



I can remember a meeting out at his house, in the evening. People would come in, civil rights leaders, and express their concern about that. Regardless of the subject matter, his natural inclination was to begin with knowledge, to begin finding out the facts, trying to understand what the issues and the policies were, and then to begin to try to formulate what legislative or other kind of response might be.

**Young:** And a strategy.

**Boies:** And a strategy. Then, once he knew where he wanted to come out, to formulate the strategy for how to get there. He was a master, both at developing important initiatives, and if you think about the important initiatives that he's been a part of, it really almost covers the gamut of the important public issues of our time: economic issues, regulatory issues, health issues, civil rights issues, immigration issues, justice system issues. All of those were areas in which he made not one but multiple major contributions. It is an extraordinary record of achievement, and you do that only if you have two abilities. One is the ability to define what ought to be done, understand what ought to be done, and second is the ability to get it done. Some people have one, some people have the other. Very few people have both the ability and willingness to do the hard work that is involved in formulating policy, and then the political sense and ability as to how to implement it. The little over two years that I spent with him was a crash course in both of those things.

**Young:** That made it worthwhile, didn't it?

**Boies:** It certainly did. It was a great experience.

**Young:** And also, if you don't get it all, you get—

**Boies:** Exactly.

**Young:** The point is to get something done, that's my impression.

**Boies:** Yes.

**Young:** Even if it's not—because there will always come another day.

**Boies:** Exactly.

**Young:** And his longevity in the Senate has been such that he can have that chance.

**Boies:** Exactly. I mean, you don't want to let the perfect be the enemy of the good. He always reached very high, but he also was realistic to know how far he could go this year, this term, this Congress, and he was good at making the certain step, put it in the bank, and then using that as a platform for further reform later on.

**Young:** I diverted you a minute ago, when you were going to talk about Criminal Code reform as another example, and then I think I introduced a digression. Do you want to go back to that?

**Boies:** Sure, and let me give you a little background. In 1978, Senator [James] Eastland from Mississippi was the Chairman of the Judiciary Committee, and the Antitrust Subcommittee was the largest subcommittee of Judiciary. That was the reason that Senator Kennedy had got it, based on his seniority, in 1977. Then in 1978, Eastland retired, and he actually retired early, his term was up at the end of '78 and ordinarily, his successor would have been sworn in, in January of '79. In order to give his successor from Mississippi a leg up in seniority, he resigned early, so that his successor would be senior to all of the other new people coming in, which meant that Senator Kennedy became Chairman of the full Judiciary Committee at the end of 1978. He asked me to then become Chief Counsel and Staff Director of the full Judiciary Committee, and I agreed to do that. The scope of my work and his too, to some extent, broadened considerably once we knew this was coming.

**Young:** Do you think he knew that Eastland would be retiring?

**Boies:** Yes, he knew.

**Young:** I'm trying to get a sense of whether he was preparing and thinking about that.

**Boies:** He was, and he was already involved in many of his initiatives. Whether he was Chairman of the Administrative Practices Subcommittee or the Antitrust Subcommittee, or what subcommittee he was chairman of, he was still pursuing all of these other agendas, but once he became Chairman, he had much more control over the scheduling of hearings and legislation and the like. We worked with Senator Eastland's staff when we were in the Antitrust Subcommittee, and Kennedy had a remarkably good relationship with Senator Eastland, given how diametrically opposed they were on a great many important issues. On a personal level, he related very well to Senator Eastland and he was able to get a lot out of him, but there's a difference between what you can get out of somebody and what you can do when you are the somebody.

So when he became Chairman of the Judiciary Committee, he had much greater freedom and ability to push his agenda. One of those issues was Criminal Code reform, and that is something he had been interested in for a long time. Ken Feinberg was the lead person on that effort, and he devoted a lot of his time and the Senator devoted a substantial amount of his time to listening to people and doing the analytical work, getting it right, and this was a terrible drafting issue that involved countless hours of worrying about the details, because justice reform is inherently a detail-oriented task. The principles are always general, lofty principles, but when you begin to translate those into how do you guarantee rights and how do you guarantee predictability, how do you guarantee the rule of law, how do you guarantee an effective, functioning justice system, that gets down to a level of detail that is hard and complicated, and again something that does not carry with it a lot of political upside.

**Young:** It's really full of political landmines.

**Boies:** It is.

**Young:** No wonder the Brown Commission didn't touch it. *[laughter]*

**Boies:** Yes, right. It was not a mystery. I mean once you got into it, it was not at all a mystery as to why it was something that nobody else had been able to do.

**Young:** I've never asked him whether he was sorry he ever.... [*laughter*] But it took a long time even to get pieces of it.

**Boies:** Oh, yes, absolutely, because every sort of interest was aligned against change. One of the things I admire most about him is his willingness to fight for and accomplish change, including in many areas in which change was not popular as it is in the current election year, but was something that most of the forces in society were aligned against. I have somewhere a poster that I got, you know his quote about, "To sail against the wind." He was both prepared to do that and able to do that again and again. It is the juxtaposition of those two qualities—the person who is willing to, wants to sail against the wind, was prepared to craft the initiative, but then the person who is able to do that, they accomplish it. I saw that over a long period of time, both when I was there and in the decades afterwards.

**Young:** It's surprising that little has been written about him, when you consider, I mean outside of an analytic sort, very little. But some commentators have advanced the idea that before he got the Presidential bug out of his system—and they differ on when that was—he no longer had to think about a future career when he took a position in the Senate, and the implication is that it was a calculation—that his stands in the Senate, stands on legislative issues, were calculating toward a further career move. What I'm hearing a lot of is that that doesn't really stand up.

**Boies:** I don't think that really fits the facts.

**Young:** His position didn't really change when he got it out of his system.

**Boies:** I really don't think so. If you look at the period of the late '70s, I mean that is a period when he challenged Carter for the nomination. He obviously was focused on it, and yet this is the time of his deregulation work, the Criminal Code reform, lots of initiatives that did not have a political constituency in favor of them and indeed were contrary to the political interests and wishes of many of his natural constituencies. I would be very dubious about the idea that after 1980, he became less political. Every person in government has got to focus on politics. In order to be a good Senator, you first have to be a Senator. But one of the things he said to me in the first conversation I had with him was that he was very fortunate in having a strong Massachusetts constituency. He believed that he really could pursue what he thought was right. That doesn't mean he wasn't sensitive to Massachusetts. He was enormously sensitive to his constituencies, and on issues that mattered to Massachusetts, he was very attentive. What it meant was that on national issues, he was able, because of the security that he had in his home state, to stake out positions that other people might have been reluctant to do.

In terms of his national ambitions, I certainly knew him most closely from the period immediately before the 1980 convention, and in that period of time, while he was focused on the politics of running against Carter, I don't think his legislative work was calculated necessarily to advance that candidacy. Indeed, as I've said before, I think if what he was trying to do was develop legislation that would have been supportive of a national campaign, he would have made other choices. I think his choices, both before and after 1980, were basically the same kinds of choices, and the procedures that he followed were basically the same kind of procedures.

The people that I talked to who had preceded me working for him, and the people that I've talked to who followed working for him after I did, all tell the same stories. They all tell you the same process. They all tell you about the early morning, late night meetings at his house, the gathering together of experts, the tremendous amount of time spent on developing policies, his willingness to follow the facts and the policies, where they led, even when it put him in conflict with some of his natural political constituencies. I think all of that existed while I was there, before I was there, and after I was there.

**Young:** It's been very interesting to try to discern the learning curve. He comes in at a very young age, under the shadow of two brothers. The Presidency is way in the distance if it's there, and as a very young man in a Senate that was rather run by the seniors. To try to discern the development of a distinctive style and talent, development of the skill that was very suited to the Senate, unlike I believe his brothers, when they were in the Senate, that it might have been said of them. They weren't terribly interested in the Senate, except for as a career advancement, though that's somewhat unfair.

**Boies:** No, I think you're exactly right. I think he was well suited for the Senate and he was very committed to the Senate. His ability to be deliberative, to think, to analyze and put together a program, and then work collegially with others to get it done, combined, as I said before, two attributes that are not usually combined in somebody. Now remember of course, when I met him, although he was still a relatively young man, he had been in the Senate for 15 years. He had a lot of relationships. He had learned people. Watching him deal with Senator Eastland and Senator Cannon, Senators [Orrin] Hatch and [Paul] Laxalt on the Judiciary Committee, he spoke as somebody who had a lot of natural talent at it, but also as one who had grown in the experience of a decade and a half of doing that.

**Young:** I think basically, the mold was pretty settled by 1977-78.

**Boies:** I've often wondered what it would have been like to work with him when we were both 15 years younger. I suspect there was a lot of learning that went on with him, like all of us. But by the time I met him, as I say although he was still a relatively young man in the population and a very young man in the Senate, even in '77, he was somebody who was very experienced and very comfortable in his role.

**Young:** It's almost as though the Senate has got in his blood.

**Boies:** Yes, I think it had, I think it really had. Although he obviously ran a very determined campaign against Carter, I think there was also a sense in which he really enjoyed the Senate. When he came back to the Senate, it was not with a sense of defeat or a sense that he was now not going to get to do what he really wanted to do. It was, he was now going back to something that he really enjoyed and was good at and made a real contribution at, and I think may have been happiest at.

**Young:** You weren't there, you had left the staff, by the time of the actual campaign, when he really got serious about the campaign. Is that right?

**Boies:** Yes and no. It was pretty intense when I was there. I was there until early in 1980. I can remember a lot of political activity. For example, the last year or so that I was there, I shared a house with Rick Burke, you know the guy who kind of went crazy?

**Young:** Yes.

**Boies:** Most of the time that we spent there was on political issues, so it was pretty active, and I was at the convention. I was at the 1980 convention when he gave the speech.

**Young:** In essence the victory speech.

**Boies:** Yes, yes, right, exactly, it was, it was. It was a little bit like somebody who had actually just won the nomination, and I think a lot of people listening to it wished he had.

**Young:** During this time when he was out on the campaign trail—you know, Iowa, and dealing with the many problems of running the campaign—there were conflicts, there were divisions, and so on. He couldn't have been paying much time or didn't have much time to spend on what was going on back in the Senate.

**Boies:** I think that's right, and during that period of time, I don't think there were any new initiatives started. If you look at when he started initiatives, there's a gap, but he spent enough time to keep the initiatives that were already underway going.

**Young:** How could he do that, though? Did you feel neglected? Were there times when you wished he was there?

**Boies:** Well, not really. He was still asking an awful lot of questions, and how things were going and did we do this yet. It would be an occasional meeting and lots of phone calls, but he kept on top of the initiatives that were ongoing, and he's had it all in his mind, because all of these things had been formulated and crafted and worked on for weeks, months, years before. So it wasn't as if he was trying to learn it. What he was trying to do was implement it. That's why I say that I think you've got to draw a distinction between major new initiatives, which I don't think he would have tried and he didn't try to start during that period of time, and carrying through with the stuff that was already underway. I also like to think that he had a pretty good staff to keep it going.

**Young:** Well, I think Carey Parker was with him on the campaign.

**Boies:** Yes, most of the time, although not all the time, but most of the time.

**Young:** Can you talk about how Carey Parker fitted into the picture of the kind of work you were doing with the Senator? I'm trying to get a sense of, at different periods, what the real working relationships were within the staff, the political staff or the office staff and the committee staffs, and so forth.

**Boies:** Sure. Carey was sort of senior advisor. He had been with the Senator the longest. As his Legislative Director, he had a close relationship with the Senator, he knew of the Senator's objectives, style, relationships. He was always somebody you would go to, to talk through issues

and to find out how you would approach somebody. For example, in the regulatory, deregulation issues, when we knew we were going to have conflicts with Senator Cannon and the Commerce committee staff, I remember we would go to Carey and try to talk through who did he know, who did the Senator know, who were the best bridges there. He also had substantive input, particularly in areas that he had worked in. Now, those tended to be less the Judiciary Committee issues, and I probably did not work with him substantively as much as some of the other people did, from a substantive standpoint.

**Young:** On healthcare and other things he was—

**Boies:** Healthcare, yes.

**Young:** —I guess more involved. Did Kennedy look a lot over your shoulder?

**Boies:** Yes.

**Young:** He did? He didn't just say go to it and you're on your own?

**Boies:** No, he didn't. He was not a micromanager in the sense that he would try to redo what you were doing, but he was somebody who was always asking questions, so that he knew what was going on, and there were two kinds of questions. There were the questions that were designed to actually get him knowledge, information that he needed to know or wanted to know; then there were the questions that were designed to make sure that you were doing your job. You could usually tell which category the question fell into.

**Young:** Did you ever get into a situation where somebody complained or beefed about you to him?

**Boies:** Oh, I'm sure, absolutely. Because we were doing a lot of things and I'd come from the private sector, and particularly in Judiciary. Judiciary had the largest staff of any committee in the Senate at that point. I forget the exact number; but it was more than 120 people on the staff, I think. I was used to an organization in which people worked for you because you'd hired them, as opposed to they were there because they wanted to "make a difference." I remember saying to one of my partners, after I had been down in—this was when I was still at the Antitrust Subcommittee, which was smaller, but it was the same type of environment. I remember saying to one of my former partners that one of the things that was most remarkable was you couldn't just order people to do things; you had to convince them and persuade them, even when they were working for you. And so I'm sure that there were people who thought that I pushed hard.

**Young:** I haven't heard any, but this is really a question about—you know earlier, your remark when you were driving in, in the morning to the office, and he was micromanaging the driver.

**Boies:** No, exactly. When he knew something, he knew it well and he was totally convinced that he knew it perfectly, particularly on issues of who to contact and how to contact them, and how to bring them along, stuff like that. I mean, nobody second guessed that. Now on some of the substantive issues, I think he did rely on those of us who had particular expertise and background. He would get complaints from maybe staff people, but also from people in the Commerce Committee, who would complain about what we were doing—maybe not always but

usually it was something that we had talked about in advance. But it always gave him the ability to say, “Well, you know how aggressive David is, I’ll talk to him, we’ll try to work this out.” It was a pretty effective way of dealing with some of the conflicts that inevitably occurred, given the scope of his interests.

Remember, this was a Senator who, particularly once he got to be Chairman of Judiciary and was also on the Health, had a lot of actual jurisdiction, but his initiatives spread far beyond the jurisdiction of the committees that he was working on, and so you always had to work as collegially as possible, which was not always perfectly collegially, with other committees, other Senators, other staffs.

**Young:** Would you call the staff very competitive at that time?

**Boies:** No, I wouldn’t. I don’t think so. I mean, I came from a law firm after all, and so for me it didn’t seem at all competitive. It was, I think, a pretty closely knit staff. We had a lot of fun, we had parties, played softball.

**Young:** Was he having his Christmas parties then?

**Boies:** Yes.

**Young:** With skits?

**Boies:** Yes. I think everybody enjoyed it. He was a great leader in that respect, and I think everybody appreciated the opportunity to be working with him, and I think that had a lot of cohesiveness to it.

**Young:** Well, as you know, his reputation in the Senate has for many years been that he has the best staff.

**Boies:** Yes, he had a great staff. If you look at the people—just take Judiciary. You had people who went on to become Federal Judges, leaders in law firms, I mean Patti Saris, who was a young lawyer on the staff, was typical of the really bright, committed people that he attracted.

**Young:** Why did you leave?

**Boies:** It was time for me to go back to practice law. While I was agnostic as to how long I would stay, there was a limit to how long I could stay right then. When I went down there, I talked to Steve Breyer, who I think had said that he needed to go back after two years or something, and I said that that was about the time I thought I could stay away from the firm and still reasonably go back. From both a family and an economic standpoint, it was important at that stage in my life to keep that position.

**Young:** Have you had a relationship with him? Have you done any work for him since then?

**Boies:** I have.

**Young:** Could you talk about that?

**Boies:** Sure. I've kept in touch with him, particularly since his marriage to Vicki [Reggie Kennedy]. I knew Vicki, well, maybe not before I knew him, but I knew her before she knew him. Her parents, Doris and Edmund Reggie, were friends of mine from when a mutual friend, Paul Verkuil, was Dean at the Tulane Law School. So I had known Vicki before and there had been times when there had been legal issues that I've helped out on. We once ran aground up off of Martha's Vineyard, sailing.

**Young:** Who is we?

**Boies:** The Senator. It wasn't serious. It was solved when the tide came back in.

**Young:** When was this, pre Vicki?

**Boies:** No, no, this was with—in fact, he had Vicki's son onboard with him.

**Young:** Curran [Raclin Kennedy]?

**Boies:** Yes, who he has just been wonderful with.

**Young:** This is not something that he wishes to advertise, running aground. *[laughter]*

**Boies:** I know. As I said, the tide was out and it was just not quite—there was just not quite enough space. Once the tide came back in, it was all fun. In the meantime, we sat there and ate lunch. But he loves the outdoors and he loves doing things.

**Young:** He loves the sea.

**Boies:** He loves the sea, loves to sail, and is just great with kids. I remember once, we were down in Colonial Williamsburg for some reason, I can't remember. It must have been some kind of conference, but we were down in Colonial Williamsburg and I had two of my children with me, and I think he had Patrick [Kennedy], and I think Patrick may have had a friend. We had a free afternoon, and so we organized an impromptu soccer game; the adults against the young people. You know, you really saw how natural he was in dealing with children and how much children reacted to that.

**Young:** Did he have dogs when you were with him?

**Boies:** Yes.

**Young:** What breed?

**Boies:** I don't remember.

**Young:** This is before Splash and Sunny.

**Boies:** I don't remember.

**Young:** They're in every interview that I've had with him.



**Boies:** Right, yes.

**Young:** Sometimes vocally. [*laughter*]

**Boies:** Yes, right. I can remember them out at the house, when we would go out to the house, particularly in the evening. I don't know, maybe they slept late or something. I don't remember them so much in the morning, but I do remember them definitely in the evening.

**Young:** What did you, yourself, take away from that experience of having been with this extraordinary—I mean in retrospect, his longevity in the Senate and his accomplishments, he sort of stands out as a unique historical figure.

**Boies:** He really is a unique historical figure. I don't think there has ever been anyone who has accomplished as much as he has in the Senate, and who has been a leader in his party for as long as he has, and a leader who has been as consistent for his point of view. There were times when the country turned right. He never did. He always stayed on course and he was always somebody who I think the country, or that part of the country that believed in those principles, could always turn to, and you always knew that he was there to provide leadership. That was very important during a period of time when there were very few people who were prepared to speak out for the issues that were important to him and important to a lot of us. It was easy to speak out for those issues earlier, and it's easy to speak out to those issues now, but you're old enough, as I am, to have lived through both the before and after, and there was a period of time when the compassion and desire to help people, the belief that government could actually be part of the solution, was not merely a problem, was something that wasn't so popular in this country. He kept that hope alive, he kept those principles alive, and while part of his legacy will be his legislative accomplishments, another part of his legacy will be his leadership in terms of advancing and preserving a real progressive legacy for this country.

Part of what I took away from that was a confidence in that progressive tradition. Part of it was just learning another area, which is not the substantive area. I knew the substantive area when I went down there, and you always learn a little bit more as you do something, but it's incremental. The thing that really was different was seeing the political dynamic, the working together, the crafting of legislation, the relationships that make the government work, or at least made the government work then. I certainly took away an admiration for the man, both as an individual and as a political leader, and as a worker. You cannot work for him without admiring how hard he works, and here's somebody who didn't really have to. I mean his political position was secure. He could have done half of what he did and it still would have been a lot, but he was always working as hard as he could to accomplish things for the country. That was what he was committed to. It was both rewarding and inspiring to watch that and have, for a brief period of time, participation.

**Young:** He could wear you out.

**Boies:** He could wear you out.

**Young:** He certainly—the energy that he has.

**Boies:** Well as I say, it's one thing for people who like to get up early and work in the morning. It's another thing for people who like to stay up late and work at night. But if you've got somebody that you're working with, who is working both in the morning and in the night, that can be pretty exhausting.

**Young:** Joan [Bennett Kennedy] was no longer at McLean when you were there? They divorced in '81.

**Boies:** She was part of the campaign.

**Young:** Yes, that's true.

**Boies:** And so she was around in that sense, but I think everybody believed that the relationship, if not ended, had changed considerably.

**Young:** When you had the issues dinners down at the house, was she a part of that?

**Boies:** Well, she was occasionally there. She was there occasionally, not usually, but you would see her and of course, she was, as I say, more visible during the campaign.

**Young:** Any final thoughts?

**Boies:** No.

**Young:** Well, thank you very much.

**Boies:** Thank you very much.

**Young:** It's been very enlightening.

## INDEX

Airline deregulation, EMK and, 3-5, 6, 8  
Antitrust legislation, EMK and, 3, 8

Boies, David  
    and antitrust legislation, 3  
    and deregulation, 3-5, 8  
    and RFK's campaigns, 2

Breyer, Stephen, 2, 3, 6, 15

Brown Commission, 8, 10

Burke, Richard, 13

CalComp, 2, 3

Cannon, Howard, 4, 12, 14

Carter, Jimmy, 11  
    and deregulation, 4, 6-7  
    and EMK, 7

Chamber of Commerce, 5

Consumer Federation of America, 5

Criminal Code reform, 7-8, 9-10, 11

Deregulation  
    airline, EMK and, 3-5, 6, 8  
    Carter, Jimmy, and, 4, 6-7  
    EMK and, 3-5, 6, 8  
    trucking, EMK and, 3-5, 6, 8

Eastland, James Oliver, 10, 12  
    and EMK, 10

Eizenstat, Stuart, 4

Feinberg, Kenneth, 10  
Flexner, Donald L., 4

Hatch, Orrin, 12

IBM, 2, 3  
Illinois Brick, 8  
International Association of Machinists, 5

Kahn, Alfred E., 4  
Kennedy, Curran Raclin, 16  
Kennedy, Edward M.  
    and antitrust legislation, 3, 8  
    bipartisanship, 4-5

- and Cannon, Howard, 4
- and Carter, Jimmy, 7
- character, 17
- and Criminal Code reform, 7-8, 9-10, 11
- and Eastland, James, 10
- and JFK, contrasted, 12
- and Massachusetts, 11
- personality, 11, 14-15, 17-18
- Presidential ambitions, 7, 11
- Presidential campaign, 12-13
- and RFK, contrasted, 12
- as Senator, 4-5, 9, 11, 12, 15, 17
- and unions, 5-6
- Kennedy, Joan Bennett, 18
- Kennedy, John F., and EMK, contrasted, 12
- Kennedy, Patrick, 16
- Kennedy, Robert F., 2
  - and EMK, contrasted, 12
- Kennedy, Victoria Reggie, 16
- Laxalt, Paul, 12
- McInnis, Mary, 4
- Nader, Ralph, 5
- National Association of Manufacturers, 5
- Parker, Carey, 3
  - and EMK, 13-14
- Raclin, Curran, 16
- Reggie, Doris, 16
- Reggie, Edmund, 16
- Saris, Patti, 15
- Splash (dog), 16-17
- Sunny (dog), 16-17
- Susman, Thomas, 3
- Teamsters, 5
- Trucking deregulation, EMK and, 3-5, 6, 8
- Unions, EMK and, 5-6
- Verkuil, Paul, 16