

Books

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RFK in Justice

KENNEDY JUSTICE. By Victor S. Navasky.

(Atheneum, 482 pp., \$10)

Reviewed by
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The reviewer is professor of law and former dean of Yale Law School. He is also vice-president of the NAACP Legal Defense Fund.

In his first book, Victor Navasky, an able journalist and an able lawyer, has combined his vocations to good purpose. "Kennedy Justice" is a thoughtful evaluation of Robert Kennedy's stewardship of the Department of Justice.

Tracing the major themes of Kennedy's attorney generalship, Navasky unhesitatingly assigns blame in the several areas in which Kennedy was open to criticism. Yet what emerges is a sympathetic portrayal of a young lawyer who, at his brother's request, tackled a

job he was under-trained for and didn't really want—and who grew in that job: exchanging toughness for courage, and platitude for principle.

Navasky does not purport to cover Kennedy's full tour of Cabinet duty. He does not examine the 10 months Kennedy remained in office after his brother's assassination. Nor does he undertake to canvass the extra-departmental responsibilities—such as the Cuban missile crisis—which took up nearly half Robert Kennedy's working time during the years his brother was in the White House. And even as to the matters considered, Navasky eschews any claim to authoritative coevrage. Navasky points out, for example, that he lacked "systematic access to either the



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Maximum Attorney

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Kennedy papers or the FBI files." Wherefore Navasky regards his book "as more in the nature of an interim speculation than any kind of definitive scholarship."

The author explains at the outset just what he proposes to speculate about. "... as the President's brother, Robert Kennedy had a chance to be the maximum Attorney General, and ... therefore Robert Kennedy's Attorney Generalship provides a unique opportunity to focus on the points at which the pursuit and exercise of power meet bureaucratic resistance—and to ask what are the consequences of that conflict."

Although this sounds chillingly like a prospectus for a political science dissertation, there is little occasion for alarm. Only Navasky's opening chapters are addressed to the venerable problem of mastering the bureaucracy, and even there Navasky has too much zest for the plot to get overly bogged down in organization theory.

The bureaucracy whose recalcitrance Navasky examines is not the entire department, most of which Kennedy and his extraordinary cadre of chief associates—Byron White, Nicholas Katzenbach, Burke Marshall, Archibald Cox, Louis Oberdorfer, John Douglas, Ramsey Clark, John Doar, et al.—mobilized with great success. The bureaucracy in question is the FBI ("the Bureau" in departmental parlance), that less visible 40 per cent of the Department which is in effect a self-contained enclave—a "secret society" Navasky calls it—responsible solely to its Director.

On paper, of course, the Director is in turn responsible to the Attorney General. But ever since Attorney General Harlan F. Stone put Mr. Hoover in charge of the reorganized Bureau in 1924, the Director has cultivated the Bureau's independence of whatever bird of passage happens to be Attorney General. Hoover's success in achieving autonomy has made him, in Navasky's view, the "ultimate bureau-

crat," an antagonist worthy of Robert Kennedy, the potentially "maximum Attorney General."

Navasky shows that Kennedy kept peace with Hoover by avoiding confrontation—i.e., by not asserting his theoretical command authority. Occasionally Kennedy secured Hoover's limited cooperation—e.g., in combating "organized crime" (a foe as high as James Hoffa on Kennedy's list of priorities when he took office)—by encouraging the Bureau to enlarge its domain. More often, Kennedy simply left the Bureau alone—with certain important and untoward consequences.

Kennedy's non-interference explains why Hoover's legions were seldom deployed in force to uncover violations of the civil rights laws, a realm of law enforcement remote from the Director's interests. It also helps explain—but not excuse—Kennedy's limited acquaintance with the rationale and scope and effectiveness of bureau wiretaps he formally authorized, and also his evident unawareness of "bugging" procedures Hoover claims (and Kennedy denied) Kennedy was privy to.

Indeed, Navasky's case histories of electronic surveillance—including the peculiarly distasteful tapping of the phone of Martin Luther King, which Kennedy reluctantly approved compromise a devastating rebuttal to the arguments now being urged on the Supreme Court by the present Attorney General that executive discretion to tap for "national security" purposes, without review by a federal judge of the reasonableness of the proposed invasion of privacy, is consistent with the Fourth Amendment. Executive reluctance to be accountable to the judiciary has a long, if not an honorable, history. It is the very reason Madison in 1789 urged the enactment of a Bill of Rights—"... independent tribunals of justice ... will be an impregnable bulwark against every assumption of power in the legislative or executive: they will be naturally led to re-

integrity even to a Ross Barnett so long as he was governor of a "sovereign" state.

Perhaps Navasky is right. But perhaps not. It may be that journalism here triumphed over legal history. To put great stress on the asserted penchant for compromise of "Ivy League gentlemen" obscures the larger political context within which John Kennedy's administration usually opted for half-measure on civil rights.

Before Navasky's thesis becomes a final judgment, it would be instructive to retrace how and why Lyndon Johnson's administration (for the first 10 months of which Robert Kennedy was Attorney General, to be followed by Katzenbach and Clark) moved farther and faster. Was John Kennedy's hesitancy on civil rights an obstacle, or a bridge, to Lyndon Johnson's forward march? There is a book to be written here—a book which would, among other things, shed additional light on whether an Attorney General is strengthened or weakened by being the President's brother. Navasky's excellent first book entitles, and perhaps obliges, him to write the sequel.