

# Robert Kennedy— as Attorney General and His Father's Son: The Strange, Sad Tale of James Landis

By Victor Navasky

The code of the Kennedys, with its emphasis on loyalty, served Robert Kennedy, the political manager, well. But it terribly complicated the life of Robert Kennedy, the Attorney General. The same network of rights, privileges, duties, debts, loves, hates and obligations that allowed the Kennedy family to extend itself so vastly rendered the impartial exercise of prosecutor's discretion—where the family was concerned difficult, if not impossible.

The tests and challenges were tough ones. In the case of Judge Eugene Keogh, for example, Robert Kennedy as Attorney General had to prosecute a political ally whose brother had "delivered" Brooklyn to the Kennedy forces in the election of 1960.

There were others; but the major test of Kennedy's incorruptibility was to come in the case of James M. Landis, where Kennedy would be faced with the prosecution of a man who had been one of his father's closest, most trusted advisors for more than 25 years, a distinguished member of the law community, the former Dean of Harvard Law School, and a member of the innermost family circle of that closest of families. But, also, a man who, as the astonishing evidence presented itself, had broken the law, albeit for the most complicated reasons. Yet, broken it.

On the surface the Landis case was clear-cut. Landis, an intimate of the Kennedys, had failed to pay his taxes for five years. The Internal Revenue Service found out about it, he was indicted, pleaded guilty and was sentenced to thirty days in jail. In addition, according to public accounts at the time, the Attorney General properly disqualified himself from playing any role in the case.

"Bobby had nothing to do with it," says Nicholas Katzenbach. "I wouldn't let him. Landis was so close to the family. I said, 'You cannot make a decision not to prosecute Landis. If you can't make that decision, don't make any.' I said I wouldn't discuss it with him. I told the President that Bob was out of this, and so should be, and when it came to a conclusion I would let him know what we were doing and how. It was the most unpleasant thing I had to do in the Department."

Robert Kennedy may have disqualified himself but that did not mean the code of the Kennedys would not assert itself in the course of the proceedings. In fact, were it not for Landis' relationship to the Kennedys and an IRS bureaucrat's image of how the Kennedys did business, in all probability James Landis would have been spared the humiliating sequence of events which ended with his death by drowning in 1964.

For historical reasons, I think, the Landis situation deserves recounting in some detail because it is in many ways a metaphor for the political and ethical

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obstacles which get in the way of any prosecutor who would temper justice with mercy. That the prosecutor was the Attorney General of the U.S., the President's brother and a Kennedy, that the justice he wanted to temper had both a large and a small "J" and that the defendant was a member of the innermost family circles meant, among other considerations, that the attempt to reconcile personal obligations and official ones would be further complicated by the glare of publicity.

The life of James Landis and the life of the Kennedys had been intermingled since the early Thirties. In 1934 it was Landis who cast the deciding vote, at FDR's request, in favor of making Joseph Kennedy SEC chairman. In 1937 it was Joe Kennedy's politicking, over the objections of Felix Frankfurter, that won Landis (who had succeeded Kennedy as SEC chairman) the deanship of Harvard Law School. Landis and Joe Kennedy had remained friends down through the years. In 1948, when Landis learned that Harry Truman was not going to reappoint him to another term on the Civil Aeronautics Board, it was Joe Kennedy who invited him to Palm Beach and advised him to beat Truman to the punch by announcing that he wouldn't accept the reappointment because he would be managing Joe Kennedy's financial interests. In 1950 Joe Kennedy and Landis collaborated on a privately published pamphlet defending the decision of Belgium's King Leopold II to surrender his army to the Germans in late May 1940.

In the late Forties Landis came up with and sold to Congress and then Revenue Commissioner Maurice Stans, now Secretary of Commerce, an amendment to the Revenue Code whose purpose was (a) to close a loophole in the tax laws on the sale and leaseback of charitable institutions; and (b) not incidentally to save the Kennedys millions of dollars in taxes on the Merchandise Mart, the huge Chicago office building they were acquiring from Marshall Field and Company; it was the only building in the country which qualified under the new provision.

Landis did financial and legal work for the Kennedys without billing them for it. And only on the prodding of his law partners did he occasionally bill for cash disbursements. He was involved in all of JFK's political campaigns, writing speeches and drafting legislation. When Kennedy went to Berlin it was Landis who came up with that line from Robert Frost about "something there is that doesn't like a wall." He personally recommended both Robert and Edward Kennedy to the University of Virginia Law School. He was the Kennedys' house intellectual. The President-elect's first announced appointments were J. Edgar Hoover to continue running the FBI, Allen Dulles to continue running the CIA and Dean James Landis to prepare a study of the regulatory agencies. Eventually, JFK made Landis a Special Assistant to the President and

the chatter around town was that Landis might be appointed to the Supreme Court.

Justice Frankfurter, who heard a rumor that Robert Kennedy took Justice Douglas to lunch after JFK was elected and offered him the ambassadorship to India as a means of getting one friend off the court to make room for another—Jim Landis—sent word to Joe Kennedy that he, Frankfurter, was preparing to get off the court for health reasons anyway, and if he had anything to say about his successor he no longer had any objections to Landis. At the time Landis remarked somewhat cryptically to a colleague that he was not interested in a Supreme Court appointment because he didn't want to subject himself to a confirmation hearing.

In other words, by the spring of 1961 Dean James Landis, who incidentally was a trustee of the fund Joe Kennedy had set up for the Kennedy children, was a virtual member of the immediate family. His relationship to the Kennedys could not have been closer.

In addition to heading the regulatory agencies' task force, Landis was deputized to work out and negotiate an airline agreement with the Russians. It was about that same time when another White House aide, Frank Reeves, the Negro National Committeeman from the District of Columbia, was discovered to be in arrears on his taxes. A great embarrassment for the President, he then ordered routine post hoc FBI checks on all White House staffers, regardless of status or rank, including Special Assistant James Landis.

Shortly thereafter, Justin Feldman, a partner in the firm of Landis, Feldman and Reilly, received a call from old Joe Kennedy. Feldman was a young, liberal New York politician who had been the middle man in getting Franklin D. Roosevelt, Jr., to campaign in the Virginia primary for JFK. He knew Joseph Kennedy but remembers being somewhat taken aback by the peremptory nature of the conversation that ensued. It went more or less as follows:

KENNEDY: Who does your law firm's tax returns?

FELDMAN: We have an accountant.

KENNEDY: Yeah, but who is he?

FELDMAN: If you must know he's been recommended to us by Tom Walsh (the in-house accountant for the Kennedy interests).

KENNEDY: Who prepares the partners' tax returns?

FELDMAN: Some of us do our own. He does some.

KENNEDY: Who prepared Jim's?

FELDMAN: He does his own.

KENNEDY: Are you sure?

FELDMAN: I'm reasonably sure because one night he took home a bunch of papers and said he was working on taxes.

KENNEDY: Is it conceivable that Jim hasn't filed any tax returns for five years?

FELDMAN: Hardly.

KENNEDY: I picked up a rumor. Would his secretary know? Would she have copies?

*Continued on page 21*

Kennedy, from page 11

**FELDMAN:** I'll check.  
**KENNEDY:** Do you know where Jim is? I tried to reach him in D.C. and he's not at the White House. I'll try to reach him and you try to find his tax returns.

A half hour later Joe Kennedy called Justin Feldman and said, "Tell the secretary to stop looking. He hasn't filed them. I got him off a platform in Pittsburgh, told him to go see Bobby and then to get his ass back to New York. I told him I want those goddam tax returns filed and those taxes paid as soon as possible. You get his secretary and records and him."

Landis went back to New York the next day, and the Kennedy accountant was inundated with documents. It took several weeks to prepare the returns, in the course of which Landis' strange story unfolded. It explained, among other things, a discrepancy Feldman thought he had noticed earlier in the year when one of Landis' bank statements crossed his desk and showed a balance of close to \$80,000 in his checking account. When Feldman asked about it and suggested that he not keep such large amounts in a checking account, Landis had said, "Oh, no. I need it for something." What he needed it for was taxes—which he hadn't paid, but intended to pay any day, perversely postponing it in the crush of other work, but every year for the previous five years setting aside the additional tax monies.

The story: In the mid-Fifties James Landis' daughter and her husband both contracted paralytic polio. He brought them to New York and put them in the Rusk Institute for rehabilitation. He needed money, so he sold some stock which he had inherited from his mother in the 1920s. The total value of the stock was \$3,700. When he went to file his return he found he didn't know the cost of the stock, so instead of making up a number or putting zero, he obtained a 90-day extension and wrote to the Boston

attorney who had represented his mother and who told him she had inherited it from his father—so Landis applied for a second extension.

He got jammed up that summer and simply did not apply for the next extension. The following year he prepared a new return, but one of the questions on the return form was, as it always is: Did you file a return for last year? he was not going to say yes and he was afraid to say no. So he put the return aside. He repeated the procedure every year through 1960, always computing how much the tax actually was, and putting the money into his checking account.

Apparently, the way Joseph Kennedy found out was that in the course of the security check started after the Frank Reeves incident, the FBI asked IRS for Landis' tax records. IRS could not find them, and Kenneth Moe, the district director in charge of the New York office, instead of going through channels and informing the Assistant IRS Regional Commissioner for Intelligence, who would then have informed the Regional Commissioner, who would then have informed Washington, called a friend in the office of Joseph P. Kennedy. Thinking this a way to do the Kennedys a favor and maybe do himself a favor at the same time, Mr. Moe, who had been with the IRS office in New York since 1923 and knew everybody in town, capitalized on his contacts and got word to Joe Kennedy's tax expert and adviser, Tom Walsh, who in turn got word to Joe Kennedy.

Landis, as instructed by old Joe, saw the Attorney General, who already knew about the story from his father. The Attorney General called Mortimer Caplin, the Commissioner of Internal Revenue, and told Caplin that Landis had a problem and said he did not know if anything could be done, but would Caplin see Landis? Caplin saw Landis, told him to get his returns filed as soon as possible and "we'll see what happens."

Landis had the money to pay back taxes and interest, which he had figured on, but not the penalties, which he had not.

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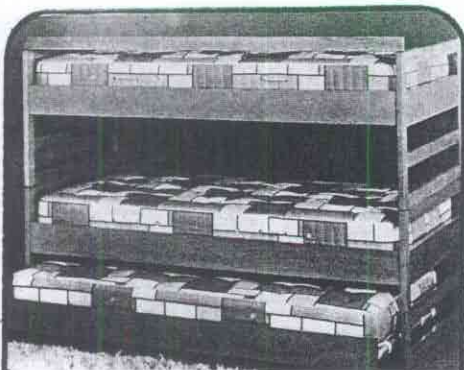
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**Kennedy  
raved and ranted  
about Landis'  
stupidity in going  
to the tax office  
without a lawyer,  
but what was  
done was done.**

Landis had the money to pay the back taxes and interest, which he had figured on, but not the penalties, which he had not. He liquidated every asset he had, and Joseph Kennedy lent him the additional money. Since Landis had been performing legal services for the Kennedys for years without billing them, the "loan" might even have been construed as payment for services rendered. In any event, on June 9, 1961, Landis filed a delinquent return for each of the years in question and paid \$48,347.02. And on September 10, 1962, he filed further amended returns for the years involved and paid an additional sum of \$46,145.23.

The returns were filed directly with Mr. Moe, at his request, rather than with a clerk. On his own, Mr. Moe accepted the return as a "voluntary" late filing. He didn't flag it in any way for Washington, although following their previous conversation Landis told Caplin it was filed. Whether or not the filing was "voluntary" was, of course, the key legal issue. As Howard T. Taylor, Regional Commissioner of IRS at the time, explains government policy, "Disclosure would be voluntary if it were made before the IRS began any investigation, and that would forestall prosecution. However, if the IRS had already begun an investigation and you then file delinquent returns, it is not thought to be voluntary."

The files on the Landis case are not open for public inspection, and nobody who was in government at the time is willing to talk, for the record, so what happened next is difficult to uncover. But shortly thereafter, IRS began an internal inquiry of Moe as to whether the return had been voluntarily filed, when it had been filed and how it had been filed. Whether this inquiry was on the initiative of Commissioner Caplin or as the result of IRS's "routine cooperation with New York state officials," who also were unable to come up with Landis' tax forms and had referred this fact to IRS's Intel-

ligence Division, is unknown. I assume that both agencies were involved, since once New York State got into the case with Rockefeller as Governor and a potential Republican Presidential candidate, the assumption of a national Democratic Administration had to be that he would have access to and could expose any cover-up.

For whatever reason, the inquiry got under way. Landis submitted his resignation but President Kennedy would not accept it. (According to one theory the President agreed to accept it in September, 1961, only because Landis was named as correspondent in divorce proceedings by his secretary's husband. At the time, nobody was in a position to say that actually he had resigned three months earlier.) Moe was asked about why and whether he handled the Landis filing outside of channels. As far as can be determined, no disciplinary action was ever taken against him nor did he ever receive any award. He died at the age of 65, a few months later.

Meanwhile a special agent in the Intelligence Division of IRS was put on the case, and as Justin Feldman recalls, "Those returns were gone over in the most unbelievable way. Every check he had or received was examined. Clients received questionnaires. It got to such refinements as to whether he had paid fair market value for a Cadillac." During the course of the investigation, Landis was called down to the Regional Counsel's office where IRS officials were supposed to make the determination as to whether the delinquent return had indeed been filed voluntarily. Landis went down to testify, and on his return he said to his law partner Feldman, "I think I've done a very stupid thing." When they asked him, why he had filed when he filed, Landis, incapable of taking the Fifth Amendment, incapable of fudging, incapable of lying, had answered: "Joe Kennedy told me to get my ass back to New York and get those returns filed immediately."

Asked what he did after he was notified about the Landis case, Regional Commissioner Howard Taylor says, "I immediately called the Regional Commissioner in Washington . . . and then the case was turned over to Intelligence, and the regular procedures for such a case went into operation."

Instead of making a finding on the "voluntary" issue one way or the other, Commissioner Caplin is said to have sent a memorandum to the Justice Department declining to make a determination. Technically, this is known as a criminal reference report, a copy of which went to the office of Robert Morgenthau, the U.S. attorney under whose jurisdiction the case fell. But in view of the involvement of the President's father and the peculiar position he occupied vis-a-vis the government and the taxpayer, and in view of Mr. Moe's involvement, Caplin wanted the Justice Department to make the determination. Caplin must have had some conversations with the Attorney General about it because he concedes that "When I told Bob it looks like we're going to recommend prosecution, he was really disturbed." Today, neither Caplin nor his aides will say what he formally recommended, but one associate of Kennedy says, "I think Bob would have been less angry with Caplin had he found it to be involuntary and referred it to the Department for prosecution. He probably hoped Caplin would find that it was voluntary—although he was never going to ask him to or tell him to."

Kennedy raved and ranted about Landis' stupidity in going down to the Regional Counsel's office without a lawyer but what was done was done. Once in the Justice Department, the case was automatically referred to the Tax Division, where Louis F. Oberdorfer, the Tax Chief, disqualified himself on the grounds that when he was appointed Robert Kennedy had sent him to Landis for advice in advance of his confirmation.

The Washington Post/Potomac/October 8, 1971

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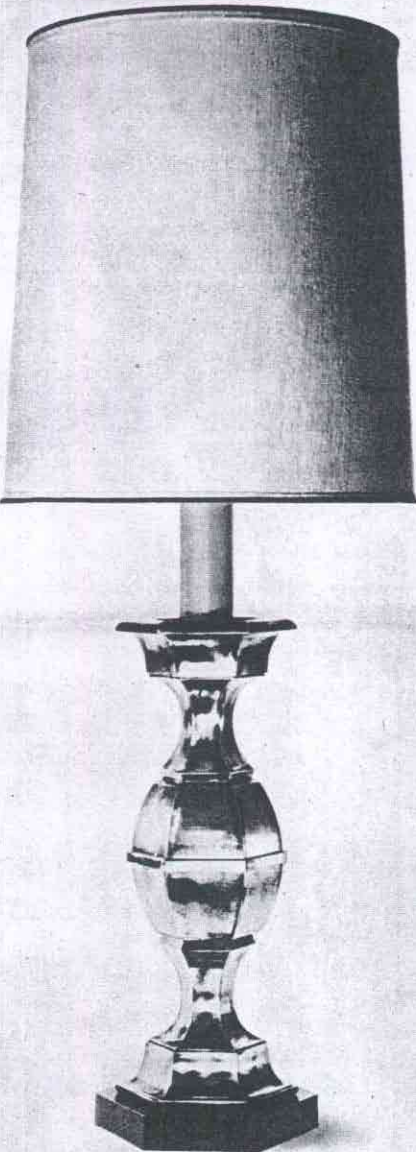
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hearing on how to avoid and handle a potential conflict-of-interest situation. Oberdorfer said that since Landis never charged him a fee, it could be said that Oberdorfer owed a debt to Landis, who had acted as his personal attorney; ergo, a conflict of interest.

So the Attorney General had disqualified himself, the Commissioner of Internal Revenue had declined to make a recommendation, and the head of the Tax Division had disqualified himself. And the disqualifications were real. "I wouldn't have accepted Bob's comment (on Landis) and he wouldn't have given it to me—I wanted a real record showing that he didn't have anything to do with it," says Nicholas Katzenbach, then Deputy Attorney General, who made the decision to go ahead and prosecute. But first, with Oberdorfer's permission, he got a bright young attorney in the Tax Division—a man who subsequently joined the Harvard Law faculty—and asked him to write a memo with the best possible arguments "that we should not prosecute." Says Katzenbach, "That's not the only case in which we did something like that, but I felt in conscience that I had to do

it. Then we read the memo and we just couldn't buy his arguments."

Justin Feldman, loyal to Landis till the end, thought the decision to prosecute arose in part because "It was already 1963 and the Kennedys were very uptight about the 1964 election. They were very embarrassed by the Caplin memo. They were concerned that Sen. John Williams (R-Del.), who was crusading against conflict of interest in government, would get hold of it and that it would become a campaign issue in 1964—if there was no prosecution Williams would charge that Justice killed it." After the fact, Kennedy told Feldman, "That sonofabitch Caplin left us no alternative."

By this time it was the summer of 1963, and Landis, who had retained Dean William C. Warren of the Columbia Law School as defense counsel, had started to fall apart. He underwent treatment, which his friends thought was neurological, at the Columbia Presbyterian Hospital. The case was forwarded to Morgenthau for prosecution. Feldman, who had served as Morgenthau's campaign manager in his

abortive try for the Governorship the previous year, approached Morgenthau even as Dean Warren approached Mortimer Caplin, each with the same argument. Landis was a psychological wreck, and Feldman and Warren did not see how he could survive a prosecution, mentally or physically. They added that in view of new evidence as to his mental condition, perhaps the question of "voluntariness" could be reviewed. Then it was revealed that Dean Landis had been undergoing psychiatric treatment intermittently since 1945.

As Katzenbach suggests, "Obviously it was psychological. He wasn't trying to cheat, he just didn't pay. It's always true that the guys that cheat pay. They are the crooks; it's just that they try to cover up what they really owe. The guys that don't pay at all are the psychological cases." But the government took the position, as Morgenthau puts it, that "The courts rather than the prosecutor determine the relevance of psychiatric problems to committed crimes. The government can't make a decision on a psychiatrist's report which you can't cross-examine." In addition, as Morgenthau's office saw it, the early irregularity in the handling of the case deprived his office of any of the normal pre-existing discretion they might have had not to proceed. "But we would have gone ahead anyway," he adds. The fiercely independent Morgenthau, U.S. attorney from the traditionally autonomous Southern District, was perhaps the country's leading prosecutor of white-collar crime. He was to indict, among others, J. Truman Bidwell, chairman of the Board of Governors of the New York Stock Exchange, Carmine De Sapio, former Tammany Hall chief, and James Marcus, Water Commissioner in the Lindsay administration. He was engaged in a campaign to expose and root out corruption in the IRS, and anything that smelled at all like a fix would, he felt, undermine these efforts. (In fact IRS investigations accounted for 64 per cent (1,214) of the Justice Department's convictions in Kennedy's organized-crime program.

When the government's firm intention to prosecute seemed clear, Feldman raised

U.S. Attorney Morgenthau was engaged in a campaign to expose and root out corruption in the IRS, and anything that smelled at all like a fix, he felt, would undermine these efforts.

Continued on page 26

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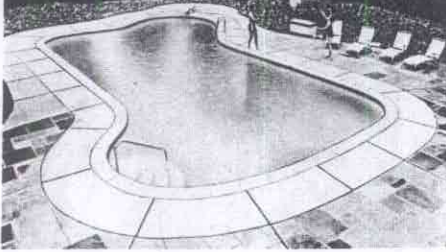
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Kennedy, from page 24

the possibility of Landis pleading not guilty on the question of "willfulness." Feldman's argument anticipated a point raised by the judge, who said at the subsequent trial: "Now if (Landis) at all times intended to file his returns and and if because of incidents that occurred in his life, due to human weaknesses

... he omitted to file the returns, he is not guilty of a crime. He is charged here with willfully and knowingly failing to file these returns for those years . . . to say that he at all times intended to file the return is substantially telling me that this defendant has pleaded guilty to a charge of which he is entirely innocent." In other words, if he had intended to file (as his separate bank account and already-made-out returns suggested he did) but did not, because of psychological or other problems, then he was not guilty. Katzenbach came to New York in July to discuss the issue with Dean Warren in Morgenthau's office and subsequently with Feldman in the Feldman-Landis office. When Feldman advanced this theory, Katzenbach argued strongly that Landis should plead guilty. Feldman felt that Landis had a good chance of getting off. When Katzenbach saw he wasn't making headway with Feldman he said, "You ask Jim whether he is prepared to go to trial on this basis—and thereby prove in open court that the fellow who was on the President's staff, the fellow on whose recommendation the President has reorganized eight administrative agencies, is psychiatrically incompetent."

Feldman said, "Nick, that's unfair." Katzenbach said, "That's where it's at," and added, "I think you're talking to yourself, Justin. I don't think you're talking to Jim. I don't think you're entitled to make this decision for him." Feldman tried again suggesting another alternative. Since what Landis was charged with was a misdemeanor, the U.S. attorney had the option of charging Landis on the basis of the information he had, as he planned to do, or he could

bring the matter before a grand jury. Said Feldman, "If you take the grand-jury route, I can send him and a psychiatrist in there (the grand jury) and if they recommend no indictment, then we're all off the hook." Katzenbach refused because "It would have to come out that one of the considerations is psychiatric."

Katzenbach then outlined what the government proposed to do. Suggesting that the whole matter could be effected with a minimum of publicity, he pointed out that the government had control of the timing of the case, the court calendar and of what judge it went before. He said that if Landis pleaded guilty in early August, then the case could be brought in New York's Southern District on August 30, the Friday before Labor Day, perhaps before an ambitious Kennedy-appointed judge who might be looking to go on the Court of Appeals. Judge Wilfred Feinberg, who had been Feldman's college classmate, seemed to be one obvious candidate. The government, Katzenbach added, would take the position that the money is paid, Landis is obviously a dedicated servant with a distinguished career, and it would end up in a suspended sentence and a fine.

At this point, Feldman brought in Dean Landis, who had been waiting in his own office. Landis listened to the arguments and said, "I've embarrassed the Administration enough. Nick's quite right. One thing (Landis' reorganization plan) has nothing to do with the other (Landis' mental health) but the press won't buy that. I think the reorganization plan is sound and I don't want to jeopardize it. So I put myself in Nick's hands." Feldman recalls: "We agreed on the timetable, the sentencing and the judge, Wilfred Feinberg."

On August 2, 1963, Landis was indicted on information and pled guilty.

On Friday, August 30, nothing went quite as planned. First, the story was not buried in Labor Day holiday statis-

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Kennedy, from page 26  
tics but became and stayed front-page news. Second, a number of potentially sympathetic judges became unavailable, including Judge Feinberg, who went to Southern District Chief Judge Sylvester Ryan, said that he and Feldman had been classmates and friends and thought he should be disqualified. Judge Ryan said, "Well, you're a young judge with a career ahead. I'm senior judge and ready to retire. Let me take the sentencing." Third, a technicality, but it turned out, according to IRS, that Landis owed more than he had paid. Finally, Judge Ryan, instead of handing down the expected fine and suspended sentence, suspended only part of the sentence, put Landis on a year's parole, but also sentenced him to a term of 30 days' confinement. "My purpose," he said, "would be to give you a time for reflection, not so much by way of punishment, so that you may perhaps appraise yourself in quietness and perhaps make some resolutions that would strengthen your will to carry you on in the future to a useful life."

Morgenthau, whose office, in accordance with a practice dating back to 1953, had made no sentencing recommendation, was livid. He called Feldman with the bad news and both agreed that the unexpected sentence, in Morgenthau's words, "made no sense in terms of rehabilitation, punitive justice, deterrence, tax law or any theory you can think of. This was not a fraud case—it was not a wheeling-and-dealing case."

On inquiry, Morgenthau told Feldman that on a 30-day sentence Landis would be sent to the West Street jail for processing and "on this short a sentence they'll probably have him serve it out at West Street." Feldman asked Morgenthau to please hold him in the Marshal's office while he and Edward Costikyan, a fellow lawyer who was visiting Feldman's law office, former County Leader of the New York Democratic Party and a partner in the leading New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison,

researched the law to see what could be done.

Costikyan found a provision in the code which stated that with prior medical certification, on a finding of the Attorney General the Director of the Bureau of Prisons could rule that if prison facilities were inadequate to a convict's medical needs, he could be moved to a private hospital. Landis' doctor said he was prepared to make the appropriate medical representations—that Landis needed the neurological treatment facilities he had been enjoying at the Columbia Presbyterian Hospital. After much telephoning back and forth, during which Feldman traced the Attorney General to a fishing boat off the coast of Maine, Robert Kennedy sent word that the medical finding had been made, but the Director of the Bureau of Prisons, James V. Bennett, felt that Columbia Presbyterian was a bit much and instead he ordered Landis to the Public Health Service Center on Staten Island.

Because of the medical certification, Landis was treated as a potential suicide. A weekend on Staten Island drove his wife, Dorothy, to distraction. "You've got to get Jim out of there," she told anyone who would care to listen. "He's got to get to Columbia Presbyterian, where his doctor can treat him. They took his belt and tie away and wouldn't let him have cigarettes—he's a chain smoker. He is in a public ward. They won't give him a razor, and he isn't getting any medical care."

Kennedy was due back from his fishing trip on Tuesday morning and Justin Feldman arranged with Kennedy's secretary, Angie Novello, to be first on his appointment list. "By that time," recalls Feldman, "I had a legal memo in support of the Attorney General's authority to send Landis to Columbia Presbyterian. The Bureau of Prisons would provide guards and since it's at our request, we'd pay the excess per diem over what the law provided." Feldman arrived at 8:30 a.m. and told Kennedy, who had not

"Well, as far as I'm concerned if the press wants to say that after prosecuting . . . I'm prepared to take that," said Robert Kennedy. "And I think the President will be, too."

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And then, in one of those handwritten pen squiggles that were his hallmark, he added, "I hope you will be kind to him. Bob Kennedy."

been fully briefed, the whole story.

He explained to Kennedy that he had researched the statute and was persuaded that the Attorney General had the legal authority to do what Feldman was asking him to do. "Have you talked to Nick?" Kennedy asked. "Yes," Feldman replied, "and he doesn't want to do it." "On legal grounds?" asked Kennedy. "He didn't mention legal grounds," said Feldman. "Have you talked to Morgenthau?" asked Kennedy. "He says it's up to you," says Feldman.

The Attorney General pushed a button and got his Deputy on the line and said, "Justin's in my office and he tells me, among other things, that Dorothy is going crazy, that we have the authority to transfer Jim to Columbia Presbyterian to serve his sentence up there under guard, that he's got the appropriate documents and that you've turned him down."

"That's right," said Katzenbach.

"On legal grounds?" asked the Attorney General.

"No," said Katzenbach, "I think you do have the authority. I think Justin's right."

"Then why didn't we do it?"

Katzenbach: "Because I think it would look terrible for you to intervene so that a close friend of the Kennedy family serves his prison sentence in the Harkness Pavilion, which is a plush, luxury—"

"Is that all you're concerned with," Kennedy interrupted, "the way the press will handle it?"

Katzenbach: "Yes."

Kennedy: "Well, as far as I'm concerned if the press wants to say that after prosecuting, under what I consider questionable circumstances, the best friend the Kennedys ever had, that the Administration has now shown a little humanity, I'm prepared to take that and I think the President will be, too. I'm sending Justin downstairs. You make the arrangements with Morgenthau for the transfer."

The code of the Kennedys was profoundly entangled

with James Landis' fate. His tax delinquency was discovered because he was on the Kennedy White House staff. It was brought to old Joe's attention because the District Director of the IRS shared the nation's image of the clannish, behind-the-scenes way the Kennedys do business. The case proceeded through channels partly because the Kennedys had officially disqualified themselves, partly because it was not part of the Kennedy way of doing business for Robert to tell his old University of Virginia tax professor, Mortimer Caplin, to get him off the hook at the expense of the integrity of the tax code, partly because Kennedy loyalists didn't want the Kennedy Administration vulnerable to charges of fix. Landis pleaded guilty so as not to embarrass the Kennedys, despite evidence that a not-guilty plea might have been sustained. He was sentenced to confinement, seldom the case in this sort of failure-to-file case, undoubtedly in part as a tribute to his importance as a member of the Kennedy family.

Obviously this was not simply a case of personal loyalties in conflict with official obligations. The Kennedy factor aside, an impartial Administration might have decided to prosecute for the reasons Katzenbach spelled out in a letter he wrote on Landis' behalf when, after the conviction, disbarment proceedings were undertaken.

"The decision whether to prosecute was a difficult one," wrote Katzenbach. "The tax burden borne voluntarily by the overwhelming majority of citizens is a heavy one. And Congress has specified that any willful failure to file a tax return is a misdemeanor, even in the absence of an intent to evade taxes. Any indication that people of prominence are somehow subjected to lesser duties would completely undermine the self-assessment system. At the same time, the isolated nature of the infraction, its unique origin, and Mr. Landis' complete coopera-

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tion and candor with the Government officials are the kind of factors which must always be weighed in a decision to institute criminal prosecution. Here perhaps Mr. Landis' public contribution weighed against him. If it were decided not to prosecute and his failure to file came to the public eye (as it certainly would), he would face not only the obloquy of income tax delinquency but also the charge, albeit completely unjustified, that he had somehow used his position and connections to escape prosecution. Thus it was only after intensive consideration that the Department decided that prosecution would have to be undertaken.

Or, an impartial Administration might have concluded that neither the immediate goals of the tax code (revenue collection, uniformity of the law, voluntary compliance) nor the long-range integrity of the system would be furthered by the prosecution of a former Dean of the Harvard Law School with apparent psychological problems, who has avoided rather than evaded his taxes, already suffered a cruel and unusual amount of punishment-by-publicity, paid his taxes, interest and penalties and was a true penitent.

Robert Kennedy's administration of the Justice Department, however, was now impartial. He did what he had to do, trying to take account of, rather than ignore, some painful and conflicting obligations. In January, 1964, he, too, sent a letter to the judge presiding over Landis' disbarment proceeding. He asked that James Landis be allowed "to continue in the practice of his profession," restating his friendship with, respect for, and belief in Landis, his integrity and legal ability. And then, in one of those handwritten pen squiggles that were his hallmark, he added, "I hope you will be kind to him. Bob Kennedy."

Landis was disbarred for a year. Before the year was out, he was found in his swimming pool, drowned.

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## The time to do it.

Ray Herrin is a retired president. "I only drive about 20,000 miles a year now," he says. "A lot of it catching up on all the hunting and fishing I've missed."

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