

FOREWORD

1. The literary property rights in this transcript have been retained by the interviewee, Burke Marshall. To facilitate the research use of the interview it has been decided that persons wishing to publish short quotations from this transcript do not have to obtain the permission of either Mr. Marshall or the John F. Kennedy Library. While a precise and consistently applicable definition of "short quotations" is impossible, it should be understood that the allowable length of a published excerpt is similar to that which is commonly permitted under the legal doctrine of "fair use" of material that is protected by statutory copyright. The Kennedy Library will provide assistance on this matter to researchers, and their editors and publishers.
2. This transcript may not be copied or duplicated in any way without the permission of the Director of the Kennedy Library.
3. The transcript may not be deposited in another library or used by anyone other than the person to whom it was given by the Kennedy Library.
4. Permission to quote extensive segments of the transcript must be obtained through the Director of the Kennedy Library.
5. The suggested citation for information contained in the transcript is:

John Smith (interviewee), recorded interview by
Bill Jones (interviewer), date, page, John F. Kennedy
Library Oral History Program

Oral History Interview

with

BURKE MARSHALL

January 19-20, 1970
Bedford, N.Y.

By Larry J. Hackman

For the Robert F. Kennedy Oral History Program
of the Kennedy Library

HACKMAN: I just wanted to ask you, just to start off with, to sort of put those Anthony Tony Lewis interviews that you and Robert Kennedy did in sort of a frame of reference. Can you remember Robert Kennedy's impressions of those interviews, the way they came out, pleased or displeased or. . . ?

MARSHALL: I don't know whether he ever read them. I don't recall. They were incomplete, and I think that he may have indicated where he thought they were incomplete. But, otherwise, I don't remember any . . .

HACKMAN: Yeah.

MARSHALL: . . . reaction.

HACKMAN: What can you remember of just about the development of his relationship with Tony Lewis and the New York Times, really, since the New York Times had had sort of a special relationship under Dwight D. Eisenhower? Do you remember how that worked out? What changes were made?

MARSHALL: When Robert Kennedy was appointed Attorney General, Tony Lewis took sort of a personal affront. He didn't think much of Robert Kennedy at that point. I don't think he knew much, and I don't think he knew Bob Kennedy very well; but he thought he knew everything about the Justice Department, and so he had a good deal of advice to give about what appointments should be made in the Justice Department. Of course, that advice wasn't followed fully, although I suppose that Tony did know a lot of lawyers around Washington, and he did have some judgment about

them. But that wasn't a very good start, so it must have required some passage of time--I mean, as time went along he became very fond and very impressed with Robert Kennedy, and he was already a pretty good friend of some of the people in the Justice Department. He had been a friend of mine for some time before that.

I don't know exactly when it changed, but the New York Times as an institution never did become much of a fan of Robert Kennedy--in fact, quite the opposite. Tony, himself, through his coverage of the Justice Department--and you could tell by his books and his writings--was impressed with the way that Bob Kennedy affected the Justice Department. It was partly the people he brought in, but it wasn't just the people he brought in; it was really his own performance and his own impact on the career lawyers there, and the tremendous respect that people that Tony had respect for gave Bob Kennedy. And so, it was all of those things, but it didn't start off that way.

HACKMAN: How did the relationship with the New York Times change from what it had been in the Eisenhower Administration when, you know, from what I've heard, they had access to some things sooner than other papers?

MARSHALL: Well, it may have been because of the press officer under Eisenhower. I can't remember his name, but I . . .

HACKMAN: The guy who just wrote the book. Have you seen that? Praeger /Publishers/ put out his book on the Justice Department, I believe. /The Justice Department, by Luther Huston/.

MARSHALL: No. What is his name?

HACKMAN: I can't remember the name either. I just looked at the book.

MARSHALL: Well, I think he had something to do with the Times. I think he came from the Times.

HACKMAN: Yes. Right. He had.

MARSHALL: So Tony thought the New York Times should have special privilege, and that's what the New York Times always thinks, anyway.

HACKMAN: Yes.

MARSHALL: And they didn't get that, of course. /Edwin O./ Ed Guthman didn't deal with reporters that way at all; so they were cut off from special treatment and I guess Tony didn't like that.

HACKMAN: Yes.

MARSHALL: At the time of the appointments--you know, this was true of all

reporters--there was a game going on of how they could beat a story about the appointment. I didn't have anything much to do with them, and I didn't pay too much attention to it. I'd see Tony, but Tony was always very fair with me; that is, he didn't try to pry that kind of a story out of me, ever.

HACKMAN: Can you remember any of Robert Kennedy's general observations on who did do a good job of covering the Justice Department, and your own, particularly in the civil rights area?

MARSHALL: I can't remember. I just can't remember. Ed Guthman would be the one that would know that much better than I would.

HACKMAN: Yeah.

MARSHALL: Tony gave us--I mean, the New York Times, not editorially, but in its coverage, I think, was fair enough. At least in my area it certainly was.

The Southern newspapers, for a large part you really wouldn't expect that, and it didn't happen. We discussed from time to time, I can't remember specifics, the impact that that had on the situation--you know, which was opposite to the interests of the South, itself--politicians and the people in the South, to have the newspapers inflaming these issues. That was true in Birmingham, although it changed, sort of, in '63. But it was very true in Birmingham before then. It was true in Montgomery, Alabama; the newspapers there were just incredible. Jackson, Mississippi, and really throughout Mississippi with some exceptions--William, II Hodding Carter's paper was an exception and the McComb Enterprise-Journal paper became an exception. Then there was a little paper run by a woman named Hazel Smith that was an exception.

In Alabama the Anniston Star became an exception after a while. There was a paper in Georgia, Gainesville Daily Times; I think, that had a very, exceptionally good editor. And the Atlanta papers, particularly Ralph McGill's paper, whatever its name is.

HACKMAN: The Atlanta Constitution.

MARSHALL: The Constitution. In Florida, the William Baggs paper in Miami.

HACKMAN: Miami.

MARSHALL: The Louisville Courier-Journal. There were no papers in Texas, that I remember, that you really could call fair. In Louisiana they weren't as bad, I don't think, as a whole. I can't remember about the Baton Rouge paper. Shreveport paper was awful. The New Orleans papers were not as inflammatory as the Jackson Clarion-Ledger, but on the other hand, they weren't very positive either.

So, we talked about that, you know, and how we could deal with it; and we tried to. I mean, we made an effort to meet with the newspapers. And

when I took a trip into the South, I usually saw the newspaper people.

HACKMAN: This was systematic. This isn't just when there were crises, but this is sort of systematically when you're in this area?

MARSHALL: Yes. Yeah, yeah. In Memphis and, you know, in Nashville. Nashville had one good paper, the Nashville Tennessean. In Chattanooga, the Chattanooga Times was not a bad paper. But we visited with those people. I usually did it with John Seigenthaler. Those were people that we visited with, and I spent a lot of time with the Birmingham papers. So did Bob Kennedy, when he could, and whenever he could get to them in Washington.

I know he spent more effort in my area, but I'd say in all the effort that he really made to influence, and constructively influence, the way that the press handled an issue, the effort that he made was with the Southern press. It was a very, very hostile, difficult atmosphere, but that's what he made an effort with.

Newspapers in other parts of the country irritated him from time to time, I'm sure like they do public officials when they treat something in a way that's different from the way it happened or the way that he sees it. But I think that his concern, and his only real concern, was with the South, in general.

HACKMAN: Do you remember ever going to a meeting with Henry Luce, trying to do something there?

MARSHALL: Yes. Yes. At the time when the Civil Rights Act was introduced by President John F. Kennedy in 1963, there was an issue-- for reasons which I will never understand--a big issue over whether or not it should be grounded constitutionally on the commerce clause or the 14th amendment. In fact, that was the one story that Tony Lewis sort of pried out of me that created somewhat of a fuss, because he called me up one day when we were working on that statute and said, "Have you ever thought of dealing with public accommodations under the commerce clause?" And that's what we were doing--I mean, that was the whole approach that we had.

HACKMAN: But no one knew it yet.

MARSHALL: But no one knew it yet. And so then he wrote a story, which was on the front page of the Times, saying, "Justice Department considering using commerce clause." The President called me up about that, and he didn't think that was very constructive. I didn't really realize that was going to be such a political issue. But in any event, that Life magazine used that, the fact that it was under the commerce clause instead of the 14th amendment, as a basis for opposing the public accommodations title of the statute. The public accommodations title was critical at that time. It sounds silly now to say . . .

HACKMAN: Yeah.

MARSHALL: . . . that whether you can go into a restaurant or not was critical, but it was critical. Life magazine had a great big circulation, and the opinion of the Time-Life enterprises and of Mr. Luce, personally, was important. We went and had lunch with him and his staff, Robert Kennedy and I and I think Ed Guthman, and talked to that issue with him and changed his mind. The way that he changed his mind, since they'd written an editorial opposing the public accommodations section, was sort of to give equal time to the other side. And the way they gave equal time to us was by writing a story on that issue, which was sort of centered about me, and it appeared in Life. It was sympathetic--I mean a sympathetic article in that it went into the issues, you know, as we'd explained them to Mr. Luce. So, that was worth it.

HACKMAN: Yes. Now before Tony Lewis called you on this, had the idea to go for the commerce clause come mainly in your own mind, or had there been a staff paper?

MARSHALL: Oh, no. We were already--I mean, that's the way we were writing the statute. We'd discussed that. Tony had gotten the idea from someone like Henry Hart or Paul [A.] Freund, someone at Harvard. And I realized after he did it, of course, that he wasn't calling me really to suggest this as an idea to me, but as a fishing expedition. Well, he fished well, till I bit on it. But the idea was thoroughly well advanced. I mean, there wasn't any question in my mind, or really in the mind of the Solicitor General or anybody else that was working on it, but that that was the most solid constitutional base for reasons that, you know, are all in the law books.

HACKMAN: Yeah. But no problem convincing Robert Kennedy to go that route?

MARSHALL: Well, he. . . .

HACKMAN: Or had that been discussed with him by the time it was this far along?

MARSHALL: Oh, yes. Oh, yes, and with the President. But they were much smarter than I was about the fact that it would be a political issue. I didn't see why it should be a political issue. I still don't see why it should be a political issue. It's something to do with the history of the Republican Party. It's a political issue only with the Republicans. It's a political issue with them, as far as I can make out, because Franklin Roosevelt put so much legislation on the commerce clause that they just never forgot it. And on the other hand, the Republican Party historically was responsible for the 14th amendment. So, there is just that historical reason for it to become a political issue.

But Robert Kennedy, I mean, he had the same reaction, "Why not use the 14th amendment?" And so did the President for some reason. There was no problem in convincing them. They accepted that; there was no problem there. But they, I guess, were smarter about the political side of it.

HACKMAN: Getting back to my first question about interviews, did you ever hear Robert Kennedy comment about the interviews he did with John Bartlow Martin? He also did one with Arthur Schlesinger. Did he ever talk about those?

MARSHALL: He didn't like his interview, I don't think, or think that it was productive, with John Martin. I don't remember ever hearing him say anything about the talk with Arthur Schlesinger.

HACKMAN: Yeah. Can you remember him talking about what he thought of the [Kennedy Library] Oral History Project while [Frederick G.] Dutton was running it and then later after it went to the [National] Archives? Did he ever talk about that?

MARSHALL: Well, he thought it was awfully slow and disorganized, I think, for a while. He was very interested in the Oral History Project. That's just an impression; I don't remember him discussing it with me as something that he asked me to do something about.

HACKMAN: Yeah. Yeah. Do you remember him ever being concerned with any leaks at all? I mean, do you know if there were ever any in terms of the interviewing that Schlesinger did, or anyone else, can you remember, that came out in the books or anything like that?

MARSHALL: Oh, I see what you mean. I don't remember his ever saying so. No, I don't remember. You mean because of Arthur's book?

HACKMAN: Yes.

MARSHALL: I don't. He never said anything to me that suggested that he thought Arthur misused that. Arthur also interviewed Mrs. John Kennedy. There may have been something there; I can't remember.

HACKMAN: Do you ever remember him talking about the books on John Kennedy? Did he ever read them, [Theodore C.] Sorensen, Schlesinger, which ones he liked or disliked?

MARSHALL: I don't remember his ever commenting on either of those books.

HACKMAN: It seems to me that most of the major civil rights things are discussed in those interviews that Robert Kennedy and you did with Tony Lewis. So, what I'm going to try to do on the Justice Department is really to just talk about his personality and his way of operating, which wasn't really discussed in there because he was involved. So, I just wanted to ask you: When you first came to the Justice Department what kind of problems, if any, did you have just in adjusting to his personality and working with him, from the way you'd operated previously?

MARSHALL: There's no comparison. I can't talk about it in terms of contrasting it with the way I'd operated previously.

HACKMAN: Yeah, because it was government.

MARSHALL: Yes. The first time that I ever met him I thought that he was a rather difficult fellow to know or understand and know what he was thinking about. It didn't bother me particularly, but I didn't have a warm impression of him when I first met him. Well, he was interviewing a lot of people about jobs, and he didn't want to give away information or, you know, to be chatty, I suppose, at the time. But, in any event, that was the first thing. So, the question would be whether that lasted. Well, that didn't last at all.

The way that he worked with everybody was that he was very, very easy to work for. He would listen. He would understand what you were saying. He did not think basically you know, in sort of philosophical or even political terms, about what to do. He would think: There was a problem. What do we do about the problem? Who does it? And when? And he was very action-oriented in that way. So, that if you went to him with a problem or something to discuss, you'd be pretty sure that you'd come out of it, you know, not with sympathy, but with some accomplishment, some idea. He'd know people that could deal with it or something to do about it.

The first problem that we dealt with was the New Orleans schools, which I discussed with him. I went to him, you know, to see what he thought we should do. He had all sorts of ideas. He happened to know all sorts of people down there. He'd call them up, you know, and he just started to operate in terms of specific steps. So, it was very satisfying to have a difficult problem to talk to him about, because he'd help. That's an impression. I don't know what other kinds of impressions you want.

HACKMAN: What about in terms of dealing in personal contacts versus memos, papers? Did he dislike getting long memos and papers from you or . . . ?

MARSHALL: Well, I didn't work that way. Some people work that way, and some people don't. I don't know whether he would have liked it or disliked it; I never asked him, but I just didn't work that way with him. On the other hand, other people did. He read what was given to him, and I suppose he liked memos; but he never complained to me about not sending him memos.

HACKMAN: Yeah.

MARSHALL: Byron White always sent memos: The Antitrust Division, of course, always does historically. The Criminal Division did. Other divisions, in a way, worked with him more systematically and formally than I used to.

HACKMAN: Yeah.

MARSHALL: That was maybe a sloppy way of doing business on my part..

HACKMAN: Can you remember traditional Justice Department procedures that upset him, things he didn't like to do if he wanted to make a short cut, something he thought was a waste of time or things like that?

MARSHALL: Well, he didn't like inaction on a problem that he knew about and he thought was important and should be dealt with, so he never liked the Antitrust Division, because the Antitrust Division is a matter who is running it, takes forever to deal with a problem. Now, it may be partly because of their use of long justification memoranda; although I must say I don't know how you can deal with the complications of Antitrust in any other way.

But if anything irritated him, it was not action, even wrong action, but inaction and an inability to get somebody to focus on and do something about something that he thought ought to be dealt with.

I remember once--this didn't have anything to do with Justice Department in a way--he asked me about putting someone in the White House to deal with the problems of the District of Columbia. We sort of tried to deal with the District of Columbia, but he had so many things to deal with--and so did I for that matter--and there weren't a lot of people around in the Justice Department you could assign to it. So, we didn't get an awful lot done, and that irritated him because the District, you know, is the nation's capital and had an awful lot of problems.

He talked to me about having a job created in the White House and about whether Charles Horsky should be put in the job. I told him, "Well, that is an awful thing to do." I said the job had no function, and it would just cause problems for the White House because the person there would have terrible problems to deal with and absolutely no authority or organization or ability to deal with the problems. It would be resented by the District of Columbia Committees in Congress who thought they should run things.

HACKMAN: Right. Yeah.

MARSHALL: . . . and that it would be resented by the commissioners; and that there was no way of getting this fellow any responsibility or authority--authority to go with the responsibility. So, I told him that was an awful thought, and he said, "Well, if we don't do that, no one will do anything about the District. "It's better to do something, even if it's the wrong thing to do, than to do nothing." And then he went ahead and did it.

Well, of course, it was the right thing to do, really. I mean, it was a start. Charlie Horsky was the right man for it because Charlie didn't go completely crazy by not having any authority the way other people would. But there was at least somebody, then, that had sort of the Presidential mystique behind him, if he didn't have any authority, that dealt with those problems; and so it gave the people of the District this new post.

HACKMAN: Hadn't Frank Reeves been doing something for a while over at the White House on District affairs, I remember?

MARSHALL: Frank Reeves was at the White House on the staff. Then he was appointed Commissioner [of the District of Columbia], and then the appointment had to be withdrawn. But he didn't really deal with the . . . I mean, that may have been an assignment of his, but it wasn't his sole assignment; and he wasn't identified in the way that Charlie Brocky was when he was appointed, "This man's responsibility is to deal with the problems of the District."

HACKMAN: Yeah.

MARSHALL: Frank Reeves came from the District. His background was in the District; he was black, and that's the right color for the District. His job assignments in the White House were sort of vague, anyway. If this was included, it was just a minor thing from his point of view.

HACKMAN: Yeah. Okay. You were talking about his discontent with the Antitrust Division while Lee Loevinger was the first guy there. So, when he replaces Lee Loevinger, he finds out that things really don't change, that he's got the same situation again?

MARSHALL: That's right. He thought of replacing Lee Loevinger with me, but then he concluded that they couldn't do that. In whatever year it was--'63 I think--there was so much going on he decided he couldn't do that. So, then he got [William H., Jr.] Bill Orrick to come back. He liked Bill Orrick. Bill Orrick was a very active fellow, himself, but as soon as he got into the Antitrust Division, the same problems existed that had existed before.

he didn't think that the Internal Security Division performed any function, and he wanted to eliminate them. In fact, he wanted, at one point, to put that under the Civil Rights Division. I don't know whether that was really dissatisfaction with J. Walter Walt Yeagley, who ran it, so much as really he just didn't think it had a function; and so he wanted to get rid of it. He didn't think it had a function; he didn't think it should have a function. That was a part of the Justice Department that he was dissatisfied with.

He rather liked General J.M. Swing, but he didn't like the way he operated and ran the Immigration Service.

He liked Ray. Whatever-his-name-is Raymond F. Farrell that replaced General Swing, who came up through the Immigration Service.

Now, in the Justice Department, of course, he had many problems with the Bureau Federal Bureau of Investigation, but that wasn't because of incompetence.

I think all the other Assistant Attorneys General he had a high regard for. He had problems which he surmounted, by patience namely, in communicating with Archibald Archie Cox, the Solicitor General. I think mainly because Archie is always a teacher, and so he had to give you a lecture with whatever advice he gave you. But Bob Kennedy took the lectures and never showed any impatience with him or anything. The other divisions: the Tax Division, he had no problem with that; the Lands Division, he had a high regard for Ramsey Clark; the Criminal Division; the Civil Division when it was run by Bill Orrick and then by John Douglas; and of course, Nick Nicholas deB. Katzenbach and Byron. I can't think of any other areas.

HACKMAN: Speaking of Cox as Solicitor General, in either your interview, or I believe it was Robert Kennedy's interview, you talked about the problem of bringing him around on apportionment to the one man-one vote position. Are there many other things that you can remember where constitutionally he wants to take a different route than you or Robert Kennedy wanted to take?

MARSHALL: Well, on the sit-in cases we had a long period of discussion where Archie--I don't know what the right verb is; I was going to say progressed--at least came to a position that I thought was essential that we take, and Robert Kennedy thought was essential; and that would be in support of the sitters-in. Now, there were very good reasons to make that a difficult position for the Solicitor General to support, very good reasons. So, I never disagreed, and neither did Bob Kennedy disagree, with the substance of the doubts that the Solicitor General had about that.

I always thought--and I know Bob Kennedy always thought, without, I think, any glimmer of a doubt--that just because of the trust, you know, the need to keep the Negroes believing in their government, we had to support

them on that issue. At least morally, it was right; and to get it all tied up in our minds with the law of trespass and private property and so forth was just wrong. There had to be a way around that. Well, I suppose that I knew more than he did about the real difficulties of that; and there were very real difficulties. So, that was another area.

But Archie, on his own--I mean, it wasn't that he was ordered to-- understood that in his own way. But he was a professor, and he felt we had to protect the court and all of these things. So, that was an issue; that and reapportionment cases. There were other lesser important cases where he had to give a great deal of thought before he could bring himself to. . . . I suppose it was Justice Felix Frankfurter's influence on him.

HACKMAN: Yeah.

MARSHALL: Once he got persuaded of what position he should take, Archie Cox was a great advocate.

HACKMAN: Never any serious thought to replacing him that you can recall?

MARSHALL: No, no. No.

HACKMAN: What about Robert Kennedy's own working habits? How well organized was he usually? How well did he use his time? And how clear-thinking?

MARSHALL: Well, he did a great deal, and he used his time very efficiently in dealing with specific problems, very efficiently. He was really a great administrator. I mean, he would always think, as I said earlier, in terms of action, who should do what, and when should they get it done by.

To go back to the District of Columbia, you know, people would have a meeting on the District of Columbia, and it would be a hand-wringing session. I've seen him take a hand-wringing session, what I would call basically a hand-wringing session, with people from the District, and turn it into an action program where they all had much more to do than they really wanted to do. They had deadlines, and they had to come back, and there was sort of a reporting system. And he'd had twenty-five people, that had come in to sort of bitch to him about how awful it was or something, that went out there assigned at least to get a swimming pool built--something specific, concrete. So, that was a great talent.

Of course, he'd forget things, and he'd lose papers. He did that right through when he was a Senator and everything. He'd always, you know, cram things into a briefcase. And so his mail answering system, which is important for a public figure, was never very good. It was particularly bad with his best friends, in a way, because he'd always want to deal with that personally; the routine mail would get answered, but an important letter from, you know, some close friend of his, who was a Senator or something, might never get answered.

HACKMAN: Hm, hm. In setting deadlines with the people, did he usually-- and with you, too--set very tough deadlines, unreasonable in many cases?

MARSHALL: Well, not with me. I mean, as I say, I don't think he set deadlines that were unreasonable. No. I don't remember him ever doing it. He's not an unreasonable. . . . He never was unreasonable, but he was tough, and he wanted to get things done. He wanted people to work, particularly with what I call hand-wringers. I don't know what he'd call them, but they were people that would come in and sort of generally complain about a situation, but had no program for doing anything about it. He liked to give them some work to do on something. He did that with civil rights leaders, church leaders, women.

HACKMAN: Yeah. What aspects of the job, as Attorney General, could you see that he really disliked the most, other than meetings like the kind you just described maybe?

MARSHALL: That he disliked? He didn't dislike being Attorney General. He liked the Justice Department, and he liked the people in it. He liked the lawyers. He liked to visit with them. He liked the telephone operators. He liked Sal Andretta. He liked all sorts. That was another area which I should have mentioned which irritated him. I mean an area, not a man--the budget.

HACKMAN: Why?

MARSHALL: Well, the way the budgets of the Department of Justice, and of lots of Government agencies, worked is that it's like other things. The Attorneys General come and go, but the congressional committee that deals with the appropriations stays, and the people that deal with that congressional committee stay. You change all the other Assistant Attorneys General. You change all first assistants. You know, you can make a clean sweep, even new secretaries and everything else, and change around the office of the Attorney General and everything, but the staff that deals with John Rooney and that committee [Appropriations Committee] stays. And you can't do anything about that because then Rooney will get mad and do something with your appropriations. And so, he liked John Rooney. I never liked John Rooney myself, but the Attorney General liked him.

But Sal Andretta and the Administrative Division was that kind of a thing; and, therefore, it wasn't a fast moving, creative kind of an operation. It was full of history and procedures, memoranda, and blocks to getting things done rather than ways of getting things done. So, he didn't like that, but he lived with it. Dealing with the budget, I suppose he didn't like that part of being Attorney General much. I can't think of anything else . . .

HACKMAN: Yeah.

MARSHALL: . . . that he didn't like.

HACKMAN: Do you feel that by '63, mid to late '63, even though the civil rights things are going on, that he's beginning to lose interest in the Justice Department? Did he ever talk with you about making a move?

MARSHALL: Well, I think he would have made a move. I mean, he was interested in foreign, international relationships; and I think if President Kennedy had not been killed, that after the election--and he had been re-elected--and after the new term started that he would have done something different, and that a lot of us would have done something different. I would have done something different. I talked to him about that once. So, I know that he expected--I mean, he would have changed. But it wasn't because he didn't like the Justice Department; it was more that he was interested. . . . As he grew to know about it, you know, after the Bay of Pigs and then the Cuban missile crisis, he became more interested in that. And the President, as you know and everybody's always said, and Robert Kennedy both had thought the State Department was a poorly run, ineffective piece of government bureaucracy. He'd done minor things to try to do something about it. That was one reason that Bill Orrick . . .

HACKMAN: Sure. Sure.

MARSHALL: . . . went over there. Both of them had that feeling about the State Department. Although I don't think there was any decision about it, if I were to guess what would have happened, I would have guessed that he would have become Secretary of State. But I don't think there was any decision. I told him once I would like to go over there myself.

HACKMAN: You wanted to go to State?

MARSHALL: Yeah.

HACKMAN: What was his answer? Did he give you one?

MARSHALL: Well, he didn't. . . . Well, you know, I could always tell. I wouldn't put things to him. I mean, he wouldn't try to decide a year in advance, two years in advance, what was going to happen.

HACKMAN: Can you recall many things at the Justice Department where you and Robert Kennedy disagreed on what action should be taken? I mean, I'm sure there were things you had to bring him around on, but can you remember things that stick out in your mind? I don't know whether. . . . That's one of the reasons I brought along just the voting registration cases. For instance, on any of those were there . . .

MARSHALL: No. There were . . .

HACKMAN: . . . disagreements on how to procede?

MARSHALL: I'll have to look at that list. I thought they should put Skelly Wright on the Fifth Circuit. I urged that. I don't know whether you remember that, but that was a big issue, in 1961 I guess, or early '62. The President decided he couldn't do that. And the reason he decided he couldn't do that was because he thought he'd lose, because of Russell Long. Russell Long was an important Senator, and what was the point of doing something he was going to lose on and make Russell Long mad at him? I don't know whether Russell Long really would have been mad at him, you know. I think that kind of thing could get exaggerated. But, nevertheless, if Russell Long were mad at him, he'd be a problem. He had enough seniority and popularity in the Senate.

So, the President--and I really don't know what Bob Kennedy told the President that he thought should be done. In any event, what he told me was that he'd decided to recommend to the President--that he'd discussed it with the President. I was down in Memphis or someplace, and he called me up to tell me that he'd talked to the President, and they'd decided they couldn't do that. So I said, "All right," but that I disagreed. I mean, there he didn't do what I thought he should do. Well, I don't know but what he was right. And, of course, he said he also, at the same time, had asked the President to put Skelly on the District of Columbia Circuit and that he had called Judge Wright--or maybe he asked me to; I can't remember--to tell him that, and to tell him that they couldn't appoint him, but that's what they were going to do.

HACKMAN: Were other people at Justice involved? I mean, can you remember other people at Justice being in favor of Skelly Wright and that it was basically the President on the other side?

MARSHALL: I can't remember. I can't even remember whether that was while Byron was still there or not. That was the kind of appointment that he, with that court and everything, would talk to me about. I'd have to have the date. If I knew whether it was Byron or Nick, I might remember something, but I can't even remember that.

HACKMAN: Yeah.

MARSHALL: There wouldn't be anyone else involved. So, that was a minor thing, but that was something I disagreed with him about. Another thing I disagreed with him about--and he knew it--was on this business of drawing guns at Oxford. You know, we tried very hard to not have a war down there, and I agreed with him on that, trying not to have a war. So, I didn't disagree with him at all on all our attempts to give [Ross R.] Barnett every loophole, you know, every public loophole that he could, every excuse, if you want, to blame it on us, as long as we didn't have a war. I didn't agree with him at all on that, but when it came to this notion, which he accepted for maybe two or three hours and then, fortunately, got it called off, that we'd have marshals come in with drawn guns, I thought that was a mistake. I thought that would be really nasty. All those sheriffs would start shooting, you know, and they wouldn't know it was play-acting. We would be putting marshals into that position and be unable

to protect them. Barnett would tell us that he would back down--he'd have an excuse for backing down--and that everyone else would back down, but everyone else wouldn't back down. Bob Kennedy said to me at that time, "You're not with me on this, are you?" And I said, "Well, I'm with you," but I wasn't really. I wasn't. I was against it, and I told him I was against it. I was scared on that. But Barnett got so scared himself that he backed down; he called it off.

Now, these voting suits; the only disagreement that he ever had with me on voting suits was, "Why weren't there more of them?" He joked about them. You know this picture (of RFK) has some comment about bringing a suit into Sunflower County.

HACKMAN: The [James O.] Eastland thing?

MARSHALL: Yeah. But he never. . . . There were eighty-four counties in Mississippi. If we had brought eighty-four suits in one week, he would have been delighted. Bringing these was a matter of getting work done, and there was an awful lot of work. This book, you know what I mean.

HACKMAN: Right.

MARSHALL: The school suits. We had a program, and he agreed with it. I mean, there was no question about it, that we had a program to bring suits in impact area schools; let's say schools where there was federal support. We had some suits just ready to bring in Alabama. I guess it must have been 1962, but it was just before Senator [J. Lister] Hill. . . . It was either just before the election or just before a primary or just before someone was going to decide whether he was going to run against Senator Hill or something like that. And so almost an hour or something before we were going to file these suits--press releases ready and everything--he called me up and said, "I just told Senator Hill we weren't going to file those suits until after," whatever it was that was going to happen. But that wasn't a disagreement. It didn't even make me unhappy. It was just that I had to undo a whole--you know, there were lawyers on planes, and there were complaints all over the place. So, I had to defer all that, you know, for maybe a month or something, for that straight political reason. That was one of the few times we ever did anything for a specific political reason.

HACKMAN: That's because of Hill's position on, what, health legislation and social legislation? Or why are they. . . ?

MARSHALL: Yes. Senator Hill was a. . . . I mean, for a Southern Senator. . . .

HACKMAN: Yeah.

MARSHALL: . . . he was a good Senator. And for Alabama he was a very good Senator. Both those Senators for Alabama, if you look at what you have in their place and what the possibilities are for Alabama, were real pluses for the country. And I think that there's a good chance

that bringing those suits would have tipped it, so that instead of having Senator Hill, we would have had, you know, someone else. So, I didn't disagree with that at all, but it was a political, straight political, interference, if you want to look at it. But that wasn't a disagreement. In fact, it was just very last minute.

Let's see. I really almost always agreed with Bob Kennedy. Even before he told me what he wanted to do, we just came out the same way. It wasn't a question of his agreeing with me or me agreeing with him. We just usually had the same reaction to whatever the situation was. And he was a very strong, loyal, agreeable person to work with. It was great fun. I can't remember any disagreements, other than what I've talked about.

HACKMAN: Can you remember the Southern Senators who--you said Lister Hill was a good Senator--in terms of the Justice Department, dealing with them on judgeship appointments or on other civil rights things, were the people that you could deal with? Who were the people that were really impossible to deal with? In his own interview he talks about Eastland as being a guy at least who would keep his word, I think, and who he could work things out with.

MARSHALL: Well, we didn't try to deal with them. I mean our general view, Bob Kennedy's general view as well as mine, and the Senators, was that you don't try to. I mean there's no satisfactory way to do it, and therefore the best thing you can do is ignore them and let them pillory you in the press. That's the way he worked. So, he had no resentment at all if he did something in Alabama and Senator Hill came out, saying, "This is the most outrageous thing that has ever happened, and the Attorney General should be impeached." His reaction would be to call up the Senator and say "I was thinking of changing my job anyway," or something like that.

HACKMAN: Yeah.

MARSHALL: So, we didn't deal with Senators in that sense. Now he liked Jim Eastland because Jim Eastland was straight. That is he'd say something was so and you could count on it being so. In the time of the freedom rides in Mississippi, we counted on Jim--Senator Eastland--to tell us the truth and be straight, and he did. And I think that was what he was referring to then. But we didn't deal with Senator Eastland in. . . . Senator Eastland, I think I had maybe one conversation with him the whole time I was in the Justice Department. Now, they had to deal with Senators on judicial appointments, but Senator Eastland was not hard to deal with on judicial appointments. There were much harder Senators--and some of them Northern rather than Southern--to deal with.

HACKMAN: I was reading that article that you wrote for the Georgetown Law Review about Robert Kennedy as a lawyer. One of the statements you made in there was that he used to sort of kid about his own legal training and legal ability. How would he do that? Did he ever really feel that his background or lack of background in some areas really was a

problem? And was it?

MARSHALL: Well, of course he always kidded about it publicly, you know, over and over again in speeches and everything. He'd relax everybody by it. I think that he had respect for people that had made successes of whatever they had chosen to do. For that reason, I think he had the feeling that he hadn't ever made a success of being a lawyer and there were people working for him who had made successes of being lawyers. I don't think that made him feel inadequate, but I think that it increased the respect, you know, between them.

I mentioned the Solicitor General and how Bob Kennedy just sat through a lot of lectures from the Solicitor General. It was really because he had such a high regard and respect for him, because he was a highly respected law teacher. So, that's the way I would characterize him. I don't think he ever had self-doubt about his ability to understand a legal issue, because he was awfully good, as I said in that article.

HACKMAN: If you want to maybe just look at the list of federal judgeships, maybe you can just comment on the ones that stand out in your mind or that you have clear recollections on. Let me just ask you the general question: Did you get involved in many discussions of those appointments, other than Southern appointments?

MARSHALL: Well, I got involved in the Supreme Court. He talked to me about both those appointments, you know, Byron and Arthur Goldberg. They seriously considered, as I'm sure it is recorded somewhere, appointing Judge [William H.] Hastie . . .

MARSHALL: Well he might have talked to Justice Douglas. Justice Douglas would be the person he would naturally talk to, if he did. I don't know whether he did or not, but Justice Douglas was the member of the Court that he was personally closest to until Byron was put

on the Court.

He talked to me about both those appointments; asked what I thought. I thought Judge Hastie would be a good appointment. Judge Hastie is a conservative judge, but he's a very good judge, and I think he would have been a good Justice. I still think so. But in any event, for one reason or another, they didn't appoint Judge Hastie.

HACKMAN: Where does the suggestion for Byron White come from? Do you know?

MARSHALL: Well, when Bob Kennedy talked to me about Judge Hastie, that was the other person that he thought. I think it came from him, or from the President. I mean, I don't think it came from some other source. It was between those two men and which one said it first. Byron was hesitant about taking it, but, you know, he was told, he was advised. I mean, Bob urged him to do it, and the President urged him to do it. And they both did it on the same ground, really, that you don't know who will be alive and don't know what will happen: this may be the last chance.

BEGIN SIDE II TAPE I

HACKMAN: You can just proceed with. . . .

MARSHALL: Thurgood Marshall, he'd talked to me about that, and asked whether I thought Thurgood, you know, could be defended as being qualified as a good lawyer. He was publicly mentioned, and a lot of the people at the New York Bar and so forth said, "Well, he's just a one-client lawyer, and he doesn't have the experience and breadth of practice." "So, he's basically second-rate," is what they said.

I was in favor of that appointment, and I told him that I thought that Thurgood Marshall was well qualified. I also told him I thought that he and the President would get the. . . . The Wall Street lawyers would look down on that, having Judge Marshall sitting on the Second Circuit, you know, which deals with a lot of the business of the New York firms

HACKMAN: Yes. Yes.

MARSHALL: . . . but that I thought they should go ahead and do it. And they did.

Now, Judge [Albert V.] Bryan, Judge Spencer Bell, both from the Fourth Circuit; they consulted me about those. I don't remember anything specific. In all these cases in the South, I talked to whoever I thought I should talk to in the areas that knew the lawyer and judge involved, to find out what they thought of them. Judge Bryan and Judge Bell were both well accepted, and they were both good appointments.

HACKMAN: When you decided who to talk to in the South, were these people you had been acquainted with, or were they people--I know in Robert Kennedy's interview I think the two of you talk about talking to Judge [Edmund M.] Reggie, I believe, about it. Is that right? Did you talk to him?

MARSHALL: Judge Who?

HACKMAN: Judge Reggie in Louisiana? Reggie is some political figure in Louisiana.

MARSHALL: Well, he may have mentioned that. I don't remember Judge Reggie. No.

HACKMAN: You don't remember that. Who were the kinds of people you'd go to in the South?

MARSHALL: Well, people that I knew for one reason or another. Some of them I knew because I'd always known them, I mean, before I was in the Justice Department. A good many of them I knew because on these trips that I took, in '61 and '62, I met them. Some of them were black, and some of them were sort of the liberal lawyer from the state, or one of the liberal lawyers of the state. The Southern Regional Council. The judges. I talked to the judges on the Fifth Circuit particularly often about both district judges. A mayor or a newspaper man, or just somebody that I'd come across, most of them that I'd come across through those trips. Many of them I'd come across and gotten to know because Bob Kennedy had suggested it. But that's who I talked to. I don't know; I suppose I must have talked to a hundred, a hundred and fifty, two hundred people at one time or another about one or more of these judges.

[Walter P.] Gewin and [Griffin B.] Bell. Griffin Bell was well-known to Bob Kennedy, personally, because of his work in the campaign in 1960. But nevertheless, he asked me about that. I'd looked into him, and he. . . . The civil rights people wouldn't fully agree with that, but I think he's a good judge.

Let's see. These others I don't remember except for Skelly Wright and Carl McGowan in the District. Well, that was because I'd practiced in the District. Skelly Wright we've talked about.

Oscar Davis, I remember that. That, as well as [Philip] Phil Elman's appointment to the Federal Trade Commission was a deliberate decision to give that kind of honor and opportunity and chance to people who had been in the Justice Department. That had never been done before really, in a way, with completely non-political, career lawyers.

Oscar Davis is a great judge. Lindsay Almond, he had been Governor of Virginia, so I remember I knew about that. I don't remember anything else then.

HACKMAN: I could never understand why, you know. If there was any debt there at all, I think. . . .

MARSHALL: Well, I think it must have had to do with [William C.] Bill Battle, somehow or other, but I don't know exactly how.

[Clarence W.] Allgood in Alabama. I was involved in that appointment. The Negro, all of the Negro so-called leaders in Birmingham recommended Judge Allgood. Judge Allgood was deemed unqualified by the American Bar Association, and so there was a controversy over his appointment, but the controversy was not a civil rights controversy. The Negro elements and the civil rights elements in Alabama were for him. The people that were against him were the bar. Well, he turned out not to be very good on civil rights.

I don't remember any of these California or Connecticut ones. Judge [William B.] Bill Jones in the District; he talked to me about that, again because I'd practiced law in the District. That was a very good appointment. Florida, I remember Judge [David W.] Dyer. Judge [William A., Jr.] McRae was appointed by Eisenhower, and the appointment hadn't been confirmed. Kennedy re-appointed him, and that was before my time.

Lewis Morgan and Judge [James R.] Elliott in Georgia. We talked about Judge Elliott on that other interview. Judge Morgan I was consulted on. I can't remember much. He was a perfectly good appointment, as much as I know. Nothing on Hawaii. Judge [James B.] Parsons in Illinois. They talked to me about him just because he was a Negro. He was one of the Negro appointments by President Kennedy, and he was a good appointment. I don't know now.

In Louisiana, Judge [Robert A., Jr.] Ainsworth we talked about. I can't remember whether I said this on the other tape, but I was asked to go down to try to persuade Judge Ainsworth to accept an appointment. I was asked to do that by Bob Kennedy, and I did. I went down to New Orleans and I talked to Ainsworth, who was then a state senator, and asked him,

in fact urged him, to agree to accept an appointment as a federal judge. That was to get around, on the grounds that they couldn't oppose Ainsworth, another suggestion--I can't remember who it was--from the Senators. Their recommendation was unacceptable. I can't remember who it was, but we thought that they couldn't oppose Judge Ainsworth. Judge Ainsworth had been

Judge [Richard J.] Putnam I was consulted about, but I just don't remember. That was from Shreveport, which is a very bad city as we've discussed. Maryland. I remembered being consulted about both those judges, but that was again because of the District and that sort of knowledge. Judge [Wade Hampton, Jr.] McCree in Michigan, that was, again, because of his race. Judge [William H.] Cox, we've discussed on other tapes. I don't know whether there's anything left to say about him.

I don't know why it was that Judge [Edward C.] McLean and, of course, Judge [Harold R., Jr.] Tyler in the southern district of New York. I remember being asked about Judge Tyler because I knew him and he'd been my predecessor. I thought that was a good appointment, and it was a good appointment. He's a first-rate judge. He was a Republican judge, and Byron White at that time particularly wanted to have him, I guess because the President wanted to have some Republicans. I was supposed to know about the New York bar, although I didn't know that much about it.

I remember Irving Ben Cooper, but it was only because he was so controversial. The North Carolina judges. I remember Judge [Lunsford R.] Preyer,

and he was a good appointment. I don't remember about Judge [John D.] Larkins.

HACKMAN: Can you remember Republican judges suggestions that were put forward by you or the Justice Department that were turned down?

MARSHALL: No. I don't think there were any. Not from me, certainly; I didn't recommend any judges. I would just. . . . That isn't completely true in the Southern states.

Judge [James R., Jr.] Martin in South Carolina I remember, and the judges in Tennessee, and the judges in Texas.

The judges in Texas, the Vice President [Lyndon B. Johnson] was involved in, so they were a special problem. The Vice President urged the appointment of Judge [Sarah T.] Hughes very, very strongly on Bob Kennedy. Because of the Vice President, he urged her appointment strongly on the President, despite the fact that the bar association said she was unqualified. Well, that was only because of her age. She was in fact a good appointment. But I remember that the Vice President afterwards told Bob Kennedy that he couldn't understand why he'd ever recommended Judge Hughes; I mean, why the Attorney General had ever recommended Judge Hughes since the ABA said she was unqualified.

Judge [John D., Jr.] Butzner and Judge [Thomas J.] Michie in Virginia I was consulted on. Those were good appointments, both of them.

The other judge, Judge [Marjorie M.] Lawson in the District of Columbia--all the District of Columbia judges they asked me about.

Judge [George] Edwards in the Sixth Circuit was someone I knew because he was a very remarkable police commissioner in Detroit. He was very civil rights minded. I remember discussing that appointment. That was an appointment that was nominated by--it started under President Kennedy and was accepted by President Johnson.

HACKMAN: Those [another list] are some. . . . Those are after he goes to the Senate. We can talk about that in New York.

In the Robert Kennedy interviews, you both talked about the Equal Employment Opportunities Commission and the Robert Kennedy-Lyndon Johnson relationship there.

MARSHALL: You don't mean the Commission; you mean the President's Committee [on Equal Employment Opportunity].

HACKMAN: Committee. Right. And you described Hobart Taylor as very much Lyndon Johnson's man over there. Can you remember John Feild and what his role was? Was he clearly someone who helped you people out or kept you informed of what was going on over there?

MARSHALL: Yeah. Yes.

HACKMAN: Or is that reading too much into it?

MARSHALL: No, I think that's. . . . I don't know whether Bob Kennedy knew John Feild really, but John Feild was out of the labor movement, basically, from Michigan. He'd worked for [G. Mennen] Soapy Williams, I think. That's the way he viewed himself. So, whenever he thought something was going wrong there, he'd come tell me, or that it wasn't being run right.

HACKMAN: That's basically what it was though, supplying information to you? Is there anything he could do himself to improve things over there? John Feild.

MARSHALL: John Feild.

HACKMAN: Right.

MARSHALL: Well I can't. . . . My memory is just not good enough. It was involved with the Plans for Progress, whether the Plans for Progress were a good thing or a bad thing. John Feild was a good fellow. I can't remember exactly what it was, but he used to come see me a good bit. Whenever he'd have a problem, he used to come see me.

HACKMAN: Can you remember that you were less critical of the workings of that Committee than Robert Kennedy was?

MARSHALL: Well, I think the Committee was much, much better than the [Richard M.] Nixon Committee [on Government Contracts] under Eisenhower, much better. So, it wasn't a bad Committee. I don't think the Plans for Progress was a bad program. It received a lot of criticism. The Southern Regional Council wrote a report that criticized it heavily. I didn't think that was fair. I thought that the Plans for Progress was not. . . . You couldn't just leave it as a voluntary program and forget the rest, but they didn't do that. The Air Force and other contracting agencies, particularly the Air Force, had a very extensive follow-up program. So, I didn't think it was a bad Committee, but neither did Robert Kennedy.

In 1963, which is when he was most critical, I suppose, of that Committee, he was trying to stir everything up and get everything moving at the same time. I think I commented on this somewhere or other. That's what he was trying to do. Among other things, he went to a meeting of the Vice President's Committee and asked a lot of questions that necessarily suggested that the things he asked about should have already been done. Well, he was trying to stir them up, and he did stir them up. It made the Vice President mad; and the Vice President would attribute political or personal motivations to that,

but they weren't political or personal motivations.

He [RFK] didn't think that they were bad. I would think the fairest way to describe that would be that he thought I had some doubts about their effectiveness--and I did. Well, I think on the whole they were very good, but they didn't have enough staff and so forth. He relayed my doubts to the President. I don't know quite how he put it, although I think I was there at the time. So then the President thought, "Maybe the Vice President is screwing things up in this terribly important area and we're going to get found out." It was partly because of the percentages. Now I remember. They kept using percentages in situations where percentages were a fraud. You talk about a 100 percent when you were building on the basis of one and you meant two instead of one.

HACKMAN: Sure. Right.

MARSHALL: I complained about that maybe. Bob Kennedy was not really down on that Committee or anything.

The Vice President worked very hard on that. The Vice President tried hard to make it a success. By comparison with all its predecessors, and in terms of the organizational ineffectiveness of an interdepartmental committee, anyway, that doesn't have any budget, I think they were much better than what you could compare them with.

HACKMAN: Can you remember whether you or Robert Kennedy frequently, or at all, called around to Government agencies to get them to try to move on this yourselves, outside the Committee?

MARSHALL: Well, I'm sure he did, and particularly in 1963. We had some statistics that showed that the Federal government itself was awful, that John Macy developed in 1963. I remember one of the things. . . . I went down to Birmingham, and there were all those demonstrations. When I came back, or over the telephone or something, I reported to him. I can't remember what office I'd gone into, but there was some office, all white. You know, every federal office, and you couldn't find a Negro even sweeping the floor. In a federal office! Forget the contractors; even in a federal office in Birmingham. So, I told him about that. I think that was a legitimate complaint--not a legitimate complaint against the Vice President's Committee, but a legitimate complaint against the whole program and the effectiveness of having the President say something and then having something happen.

I think at that time he probably did. I think he probably called up every member of the Cabinet. That's the kind of thing I'd expect him to do. And, in fact, the President had a Cabinet meeting about it.

He had something similar with the participation of Negroes--and this was something we never really got on top of because it was impossible--in the Manpower Development Training Program, the Labor Department run program. That was something we got into. He talked to [W. Willard] Bill Wirtz, I guess, who must have been there at that time, about that. They agreed that I would talk to somebody else and raised a fuss, but I don't think that

we were effective. And in the Department of Agriculture. He fussed and interfered, if you want to put it that way, with almost every other department of the government in 1963 on that issue, on their own employment policies, and on whether or not Negroes were allowed to participate in federally financed program. But there were so many of them, and they were so hard to understand, and the bureaucracy is so hard to penetrate, that it was very difficult.

HACKMAN: What can you remember about your conception and Robert Kennedy's conception of Harris Wofford's role at the White House? Of what use, if any, was he to what you were trying to do?

MARSHALL: Well, I don't know what Bob Kennedy's conception was. I know that he didn't want to appoint Harris as head of the Civil Rights Division.

HACKMAN: Yeah. That was discussed in those interviews.

MARSHALL: That was a decision that he made. Of course, I wasn't involved in that decision, so I don't know what considerations were in there or anything. And that was despite a lot of recommendations for him. I think Harris wrote a memorandum to the President, and among the recommendations in the memorandum--and Harris had been a great asset in the campaign--was that there should be someone in the White House that was assigned civil rights. They did take that recommendation, and they did put Harris in the White House. They gave him that assignment. I don't know what Bob Kennedy thought about that; I think he probably didn't like it. I think he probably thought it was a mistake. I think he probably thought that this issue was something that ought to be kept out of the White House. He never expressed that to me, but that's what I would guess that he would have thought at that time at the beginning of '61 with his brother just becoming President.

Myself, I think Harris made a contribution. He's a terrific fellow, and he's very loyal. You know, somebody else, who had been shunted aside or had difficulty, not being ignored when he was in the White House, might have gotten mad or quit or gone out and made speeches or everything, but he never did anything like that. Bob Kennedy liked him. But I don't think he liked that job in the White House.

HACKMAN: Can you remember anything else about Harris Wofford? Was he helpful in the sense that he took heat from civil rights people that would have maybe otherwise been directed toward the Justice Department?

MARSHALL: Not for very long, if he was.

HACKMAN: Maybe we can talk just a little about the Civil Rights Commission. Can you remember getting involved in discussions of appointments to the Civil Rights Commission? I guess there were really only

two appointments. Spottswood Robinson and [Erwin N.] Griswold.

MARSHALL: Very little. I suppose that somebody asked me about Dean Griswold when he was appointed, and I think that it was Harris Wofford's idea and other people's, maybe. But everybody thought that was a good appointment. I'd forgotten that Spottswood Robinson was on the Commission. He was appointed a judge. When was he appointed a judge?

HACKMAN: I don't know. I'm just trying to think whether it was during the Kennedy Administration. Was it definitely? I can't remember.

MARSHALL: Well, maybe it was by President Johnson, but he wasn't on the Commission for awfully long. I'd forgotten he was on the Commission.

HACKMAN: Can you remember actions of the Civil Rights Commission that created problems for you at Justice, or which you discussed with them?

MARSHALL: Well, there were a number. We had an argument with them over hearings in Mississippi. They were upset about Mississippi; Mississippi was something to be upset about. They wanted to have hearings down there to show how awful it was. We had problems with that, at the time that they wanted to have hearings, because of the contempt case that was pending against Governor Barnett. Maybe there were other reasons, but that's the reason that I remember. So, that was an argument. I suppose we were taking an institutional position and they were taking an institutional position.

There was good reason for our position. As a matter of civil liberties and fairness of trial, I still think that it's unfair for one branch of the Government to go in and have public hearings that get into something that is at the same time a matter of criminal proceedings conducted by the Justice Department against the people that are involved in the public hearings. That was the reason for our objection.

Another piece of business that we had--this wasn't the Justice, I mean, this was something that I didn't agree with, and the President didn't, and Bob Kennedy didn't, and maybe their reasons were different from mine; I don't really know--was the matter of cutting off aid to Mississippi. The Civil Rights Commission issued a report sometime. . . .

HACKMAN: It was when they were considering holding hearings, and instead they issued that interim report. I believe it was in '62; I may be wrong.

MARSHALL: It might have been '62, late '62 or early '63. And that report sort of took the position that Mississippi was a lawless state, and therefore all the federal monies should be cut off to anything in Mississippi. I thought, as a matter of principle at the time, and

I still think, that that doesn't make any sense. There was Klan activity and there was what I think you could call lawlessness on the part of the state officials and of local sheriffs and everything, but to say that for that reason the welfare program should be stopped and all federal monies should be cut off from the State of Mississippi, I thought was an irrational reaction.

Whether Bob Kennedy and the President agreed with that for those same reasons, I don't know; but that report of the Commission created problems for them because it wasn't something that they could do. It wasn't something the President could do, legally, or, I think, constitutionally. So, here they had their Commission recommending a course of action when the majority of the country was also mad at the State of Mississippi. I suppose if you'd had sort of a referendum on it nationally, they would have agreed with that report. So, that was a political problem, public problem from their point of view. I know that Bob Kennedy, and I think President Kennedy, both thought that the Commission was acting not responsibly in that area. So, that was a matter of debate.

Then there were some sort of substrata disagreements between the staff of the Civil Rights Division and the staff of the Civil Rights Commission because of an overlap of responsibilities where we had the responsibility to do something and they had a responsibility to disclose their judgment about whether everything was being done which should be done. So, they'd come over and then second guess, in a sense, the staff of the Civil Rights Division. It didn't bother me really, and I don't think it bothered Bob Kennedy much, but it did bother the lawyers in the Civil Rights Division a good deal, and so there was conflict over that.

I think that he thought that the Civil Rights Commission, because it had a reporting function and no action function, was not a good institution to have. He compared it with an Internal Security Sub Committee in the Senate and the House Un-American Activities Committee in the House. I still think there is something to that, that to have a committee, a commission, a governmental commission whose function is solely investigatory and reporting and public relations in areas where what they are reporting on and looking into are areas that could involve criminal activity and certainly public disgrace to the people that they're talking about is necessary at times and desirable maybe for periods of time; but over a longer period of time it has more the function of perpetuating itself than performing some sort of public service. And I think that's the way he felt about that.

HACKMAN: Was there ever thought given to not continuing the Civil Rights Commission?

MARSHALL: No, but the issue came up, the question of whether or not we should recommend that it be made permanent; and the civil rights groups always wanted the Administration to recommend that it be made permanent. The Department of Justice never really supported that position for the reasons I've just stated. So, that was a dispute, but was a rather minor dispute. The Commissioners themselves, I spent a lot of time with them, and Bob Kennedy spent some time with them from time to

time. It was all right. I mean, they understood his views and my views about it. They were good people, the Commissioners; but there was that disagreement, I suppose particularly with John Hannah and Father [Theodore M.] Hesburgh and to a lesser degree with the rest of them. Dean Griswold, particularly about the Mississippi hearings; he never agreed with us about that.

HACKMAN: How was Berl Bernhard to deal with? How straight a guy is he to work with?

MARSHALL: He was fine.

HACKMAN: One of the things that was just briefly mentioned in Robert Kennedy's interview was the Civil Rights Commission approach to the "stroke of the pen" idea on housing and how broad a housing order should be. Can you remember in arguing or in presenting the Justice Department viewpoint, were there people in the Justice Department who were in favor of a much broader housing order? Or was the Justice Department pretty unified in its approval of what was done? Do you remember that?

MARSHALL: Well there probably were, someone in the Justice Department.

HACKMAN: Yeah. Okay. I'm thinking of Katzenbach and yourself and Robert Kennedy, and maybe [Norbert A.] Schlei may have been involved.

MARSHALL: I don't think we had any disagreement. We didn't agree that the housing order should go beyond what it did. I think the issue was whether or not the President should properly try to order all banks which had guaranteed loans from the FDIC [Federal Deposit Insurance Corporation] that they could not loan money except on condition that the people that got the loans agree not to use them in mortgages and housing which the owners of that housing wouldn't sell to Negroes. We thought at the time, and I still think, that that was, particularly since it was obviously contrary to the views of Congress, an unwarranted extension of the Presidential power, as against what he did do, which was to forbid the federal financing of housing which was in a covenant or in other ways was discriminatory.

There was a debate about that, but there wasn't so much of a debate in the Justice Department. I guess there must have been some, but I don't remember it. I mean, I don't remember anybody really arguing with that bill; but there was a debate about it, and [Robert C.] Bob Weaver didn't agree. I mean, Bob Weaver wanted all housing to be covered. Well, he had a good reason to do that. But I think just legally and constitutionally in terms of a proper exercise of Presidential authority, that would have been unwarranted. That was the view that we held, and that's what we recommended to the President.

HACKMAN: We were talking about Harris Wofford just a second ago. When

he left, did Lee White sort of try to carry out the same things at the White House level that Harris Wofford had done? How does his role differ really, from where you sat, as compared to Wofford's?

MARSHALL: Well he did take over that function. The difference was that Harris' recommendation to the President, which the President accepted, was that there be somebody in the White House who was specifically assigned civil rights as his area. Harris was given that job and that function. When he left, that function was abolished and the sort of job of dealing with this area was turned over to Lee; but Lee was still Assistant Special Counsel, or whatever his title was. This was one of the areas that he dealt with; he dealt with many other areas.

HACKMAN: Any problem in that relationship? Was he helpful?

MARSHALL: No, no, no. None at all. No problem. He was fine.

HACKMAN: What can you remember about Robert Kennedy's relationship with other members of the White House staff: Sorensen and Lawrence F. O'Brien and Kenneth P. O'Donnell and Ralph A. Dungan?

MARSHALL: Well, all of them really had a great deal of respect and a close personal relationship with Robert Kennedy, all of them. So, they consulted him often about problems at the White House, and they trusted him. Except for Ted Sorensen, I think almost all of the people at the White House--not all of them, but a great many of them--their original tie to the Kennedy family was through Robert Kennedy rather than the President. That was true of Kenny O'Donnell.

HACKMAN: Can you remember the two of you ever feeling that any of these people were problems on civil rights matters in going along with things or recommending favorably to the President on things?

MARSHALL: No, we wouldn't. I mean, he wouldn't have thought of it, and I wouldn't have thought of it in that way.

HACKMAN: Yeah.

MARSHALL: They're different. I mean, different members of the White House Staff felt differently about different things, so they felt differently about various things in the civil rights area.

The President made a speech about housing, about "the stroke of a pen;" he made that in the campaign, and then there was some pressure in 1961 to do that. I thought he should do it, really. We had a meeting about that up at Hyannisport at Thanksgiving in 1961. At that meeting, the President, whom I barely knew at that time, took the view that he wasn't going to do that because he wanted to get the Department of Housing and Urban Development established first and then he was going to appoint Robert Weaver to that. The issue of the housing order would interfere

with the legislation that was necessary for congressional approval to get the Department of Housing and Urban Development established. That was his political strategy. Well, I didn't really think that made sense. I thought it would end up, and it did end up, with everybody getting mad at him on both scores. I don't think Bob Kennedy really agreed with it, either. But at that time Ted Sorensen urged him to do that, and I think Larry O'Brien urged him to do that, and that's the course he followed. Most of the people in the White House were against the President making his speech on the moral issue in June of 1963.

HACKMAN: Yeah, you talked about that.

MARSHALL: Yeah. He wouldn't have made it if he had polled everybody.

HACKMAN: Which civil rights leaders can you remember, in that period during the Kennedy Administration, Robert Kennedy either respecting or finding easy to work with? And the opposite. Maybe we can exclude Martin Luther, Jr. King for now because we'll talk about him when we talk about the wiretap thing.

MARSHALL: Well, at that time you could identify civil rights leaders. Roy Wilkins, he liked Roy Wilkins. I think Roy Wilkins liked him, and so they got along fine. Whitney Young, I don't think there was any special relationship there; that is, I don't think there was a problem or a non-problem either way. Martin King, we'll talk about. Dorothy Height, I don't think there was anything there much. I mean, these were the people that were identified civil rights leaders. Philip Randolph I think he had a great deal of respect for; you couldn't fail to have respect for him.

The student leaders. John Lewis at that time was head of SNCC [Student Non-violent Coordinating Committee] I think. He got along with him all right. Of course, the student leaders and SNCC were always a problem for the Attorney General, even then. They grew to be much more of a problem, but even then they were a problem. They sat in on us once at least. But he got along with them fine.

HACKMAN: James Farmer.

MARSHALL: James Farmer. Yeah. I mean, he liked him, too, all right, but I don't think he had a close relationship with any of those people. He had a sort of personal relationship later with Charles Evers, really because of his brother [Medgar Evers] getting killed. He felt that deeply.

He liked the Southern leaders. He really got along with them all fine.. I couldn't pick one and say that he had a special relationship during that period. Martin King was the most important of them, and he knew that.

HACKMAN: What about on legislation? How did the two of you look at Clarence Mitchell, can you remember? As being realistic, or as being tough to deal with?

MARSHALL: Well, Clarence Mitchell was effective. He wasn't friendly all the time with the Attorney General. He wasn't close to him particularly. I wouldn't blame Clarence about this, but he was unrealistic in the sense that he would accept and repeat, as fact, wrong information. That is, on the legislation, he would go to a Senator and the Senator would say, "I'm with you, Clarence." That would mean one thing to the Senator and another thing to Clarence Mitchell. I think that Clarence Mitchell, who was a really smart fellow, understood that there was that difference of view, but he would accept the Senator at face value and therefore count him as a plus on a vote when it was perfectly clear that the Senator wasn't going to vote that way.

HACKMAN: The two of you were perfectly aware of that at the time though? You don't remember times when you acted upon Clarence Mitchell's assumptions?

MARSHALL: No. No. But the Leadership Conference [on Civil Rights] did, and the civil rights groups did. As I say, I don't think that was wholly wrong or stupid of them, but we had to act on different premises.

HACKMAN: Did Robert Kennedy enjoy, on legislation, doing personal work on the [Capitol] Hill, talking to people? Or did he prefer that you and Nicholas Katzenbach or others do that kind of thing more?

MARSHALL: Well, he was very good with people in Congress. I don't know what he did on the crime bills. I mean, I can't speak to that so much. On the civil rights bill, which is what I know most about, and on appointments and judgeships, he dealt a lot with them--and he did it very well. There was nothing distasteful to him about that. On the civil rights bill, the important one of 1963, he met with virtually every Senator and large numbers of Congressmen personally about that and worked very actively himself on the Hill on it until after the President was killed. After a while, in 1964, he did it to some extent again. He did it very well, and there was nothing he disliked about it.

HACKMAN: Well, in early '64, I guess, when the problem was really holding the House coalition together when the House passed that legislation, in late January of '64 I believe, this is pretty soon after the assassination. Is he almost completely out of the picture at that point in terms of personal contacts?

MARSHALL: Yes. He didn't do much then at that time, but there was no need for him to. As far as the House was concerned, the commitments given to President Kennedy in October of 1963 were solid and never were unsolid in my judgment at all. I didn't have any doubt, and I don't think there was any doubt, that that bill would get through the House in the form that it did get through the House, no matter who was President. So, there was no problem with the House at that time. Really,

there was some argument, particularly with the liberal Democrats; but there was no question but that it was going to be passed, and passed overwhelmingly, in the House.

HACKMAN: I believe you said in the first Robert Kennedy interview that one of the things you never could understand was why [Charles A.] Halleck committed himself. Do you remember saying that? Did you ever figure that out, so to speak?

MARSHALL: No. I don't think he really knew in a way that he did or intended to, but he did. That is, I think he said something and that President Kennedy took it as a commitment and sort of accepted it as a commitment, and accepted it as a commitment with a whole lot of people around. Halleck was in the position of sort of contradicting it. At the time I didn't think he could.

HACKMAN: I think you also . . .

MARSHALL: But it wasn't a matter of conviction or conscience, I don't think.

HACKMAN: Yeah. Yeah. What about [Everett] Dirksen then? I think you also said at the time you were a little puzzled by that.

MARSHALL: Well I would not undertake to say why he did it, but it was very different from Halleck. It certainly wasn't an offhand decision. I mean, he knew exactly what he was doing. Why he did it, I don't know. I suppose that I would accept that he did it for the reason that he said he did it. He said it the way he says things, which is that there was an idea whose time had arrived.

HACKMAN: Yeah. What did Robert Kennedy think of Dirksen? Can you remember?

MARSHALL: He liked him.

HACKMAN: He did? Does that carry on through the Senate years do you think?

MARSHALL: I think he always liked him.

HACKMAN: Because he was someone you could deal with?

MARSHALL: No, he just liked him because Senator Dirksen was just a likable man. He didn't agree with Robert Kennedy about many things, but he was always honest with him. He just personally liked him. I liked him.

HACKMAN: In Robert Kennedy's own interview, he talked about really on a lot of the legislation, on the '63 legislation, part of the problem being with the liberals. That, I think, was the way he termed it: "The liberals who would rather be right than win." Who would he mean when he talked about liberals?

BEGIN TAPE II SIDE I

HACKMAN: Do you remember particularly in reference to '63-64 legislation, who of the liberals were the problem, and what upset him about them?

MARSHALL: Well, in the House Judiciary Committee--this is all recorded elsewhere--basically there was a form of the bill that was acceptable to the Republican Party in the House of Representatives, acceptable to Mr. [William M.] McCulloch and was acceptable to the Republican leadership. That was one bill. Then there was a bill, which was called a stronger bill, though it was weaker in some ways--but that's all recorded somewhere, in the form of the bills--that was supported by the Leadership Conference, which was the official voice of the civil rights groups and sort of the northern liberal groups, which were not only Democrat, but included Republicans, and which was also endorsed by the southerners. The reason it was endorsed by the southerners was that they knew that if the Judiciary Committee voted it out, then it would get in trouble on the floor and would get recommitted.

The problem with the liberals at that time was getting them to accept that fact. Now, some of them-- there were two kinds--were cynical, and some of them weren't. I guess--I mean, if you just take that issue-- that Bob Kennedy didn't think much of either group; I mean, either the cynical group or the people that didn't understand the realities. But when he used a phrase like, "They'd rather be right than win," I suppose that he was referring to the liberals who really thought they were right. That group was not just Democratic. I couldn't name them; I mean, you'd have to have a list of the Judiciary Committee. Anybody that goes back to that period and looks at the Congressmen could name who they were.

They brought along with them a group of Congressmen who really didn't care about the issues but just didn't want to get in trouble with the Leadership Conference.

[Robert W.] Bob Kastenmeier would be one of the people that were just convinced that they were right. And then there was a whole group from New York and from the East that I think were sort of half convinced that they were right and half just didn't want to get in a fight with the civil rights groups.

To some extent, this same problem existed in the Senate. Senator [Philip A.] Hart would never go against what the Leadership Conference wanted him to do on a vote, no matter what the merits of it were; although he's a very fine Senator. And there were other Senators, Senator [Jacob K.] Javits.

I think that Bob Kennedy didn't respect--maybe when he got into elective office himself, maybe he understood it better; I don't know--he basically didn't, at any time, really respect people fully that were completely impervious to argument or who had closed minds to any kind of an issue, liberal or otherwise. So, the liberals and what you would call sort of the liberal establishment, the doctrinaire liberals I mean, there is a lobby of politicians mostly in the East, but not completely in the East, that just fall into a category of not having open minds or being realistic about some of the issues; and he didn't like that.

HACKMAN: Who of the Senate liberal leadership were the people who you could deal with? Who were practical? Who were they? [Hubert H.] Humphrey or [Paul H.] Douglas or anyone?

MARSHALL: Well, certainly Senator Humphrey, who was maybe even too much flexible on these matters. In fact, Senator Humphrey in 1964, when the Department of Justice and really the White House, too--although the White House had changed; I mean, the President had changed. . . .

The Administration and particularly the Department of Justice, since we had most to do with it, were just committed to a lot of people, really fine people, that you ought to stick to your word with in the House of Representatives. We weren't going to get a bill out of the House and then run out on it in the Senate. The House thought that that had happened to them before, in the 1960 Civil Rights Act, I guess, or '57 Civil Rights Act. I don't know what it was, but it was some issue that existed in the past. So, we were committed to Mr. McCulloch and to other Republicans, and to the Democrats also, in the House that we weren't going to do that. The particular thing that they had accepted our word on, with great many misgivings, was the fair employment title [Title VII, Equal Employment Opportunity].

Well, Senator Humphrey was willing to give that up in the Senate. That was the first thing he wanted to do. He thought that if we gave, threw, left that out of the bill, then they'd get closure on the bill in the Senate. We wouldn't agree to that, never did agree to it.

Senator Douglas, Senator Javits, Senator [Joseph S.] Clark; those were some of the ones that were particularly just the other way. I mean, they were completely inflexible; they wouldn't change a word, you know. They were constantly suspicious that someone was And they'd make issues out of things that weren't worth making issues out of. There were some other Senators like that, both sides; I mean, both Democrats and Republicans.

HACKMAN: Okay. Why don't we talk then about the wiretap thing? I guess the first question is: Other than the Martin Luther King thing, what can you remember about getting involved in any discussions of wiretaps during the Kennedy Administration?

MARSHALL: On the legislation, not on

HACKMAN: Not on specific wiretaps, though? Okay. Can you remember, was there any discussion of legislation before the Department supported that [Kenneth B.] Keating bill in '61? Can you remember any involvement, or did it only come in '62?

MARSHALL: Well, I'm confused. I think that the real thoughtful effort, and most of the effort, was in '62. That's when I remember he really turned his mind to that and wanted to send up a bill that could be passed, that he could get support for, that would exercise some control over tapping and would at the same time, you know, permit what he thought was necessary, and which was certainly necessary, in order to get any bill passed at all. He devoted a lot of attention to that, but I think it was in '62.

HACKMAN: Yeah. Well, what brought the focus on that in '62? Had anyone suggested in '61 doing that kind of thing?

MARSHALL: I think so, but I think there were just so many other things to do and he just didn't get around to it. I don't think it was some specific incident or something that happened that changed his mind or focused his attention on it when it hadn't been focused on it before. It was focused on it in '61, too. He didn't involve as many people. In '62 he involved a lot of people; that's why I got in it. He involved them all.

I think he consulted all of the Assistant Attorneys General, as well as the Solicitor General and the Deputy, of course, on it--and other people. We were all in favor. You know there may have been little pieces of it, but the bill they sent down there. . . . [William H., Jr.] Bill Orrick was against any tapping under any circumstances at all. So, he just wanted an absolute flat prohibition, applying to the Federal Government and everybody. This is as good as I remember.

HACKMAN: Can you remember at that time Robert Kennedy talking about the

tapping that was currently going on in the Department, in terms of how productive it was? Can you remember what he felt was the usefulness of it, based on what he saw in the Department?

MARSHALL: Well, I don't know that he thought it was awfully useful really, but he was deeply concerned about organized, businesslike, large-scale crime. He thought that you could not get at that without some ability to monitor the communications channels that that kind of activity used. That was part telephone and part other kinds of electronics surveillance.

HACKMAN: Was there any general discussion, at the time you were considering the wiretap legislation in '62, of the other kind of surveillance?

MARSHALL: Well, that bill dealt with both kinds. It didn't deal just with taps. It dealt with other kinds of electronic surveillance as I remember.

HACKMAN: I didn't remember that that was so.

MARSHALL: Well, it did in one form. My memory then is scanty, but I remember there was a good deal of discussion about that.

HACKMAN: Discussion in terms. . . . Okay.

MARSHALL: Because you know the definition of a tap. I mean, that's technically a silly distinction. If a tap involves. . . . I mean, it depends on how you can tap. You can tap without tapping, even into a telephone. The definition. . . . Interception was discussed a great deal, but I can't remember how it came out.

HACKMAN: How does that enter into the later dispute between [J. Edgar] Hoover and Robert Kennedy and Robert Kennedy's public statements? I mean, was the interpretation of what a tap was a real factor there?

MARSHALL: Only because. . . . I guess it wasn't about bugging as such, but the way that you define a tap, if you did it wrong, would turn on whether or not--I just can't remember the technology of it, but whether you did it by induction or by a physical connection on the wires, and that's what I meant by the discussion.

My discussions with him about electronic bugs and trespass and the bugs placed by trespass were all after the Department of Justice and came up in connection with the disclosures that were made on the [Fred B.] Black case. I don't remember ever discussing the planting of bugs at all with him by the Bureau while we were in the Department of Justice.

Now, it became perfectly obvious to him and to me in 1964 that somebody was using bugs on Dr. King. We thought it was local police. I

remember discussing that with Courtney Evans specifically, whether that stuff was faked or whether it was real. It came from the Bureau, but Bob Kennedy and I just thought that the local police were doing it. I don't have any real basis, even now, for saying that it wasn't, except that I think it wasn't; I think it was the Bureau.

HACKMAN: Do you know if there was ever sort of a general review during the Kennedy Administration of policy in relation to electronic surveillance, bugs?

MARSHALL: I don't know of any except for the very extensive work on legislation.

HACKMAN: Did he ever say later that--I mean, looking back at the whole thing. . . .

MARSHALL: See, you can have electronic surveillance. The question is whether you have it illegally. The reason that there was never that kind of review is that I don't think it occurred to anybody. It certainly didn't occur to me, and I don't think it occurred to him, because otherwise I think at some point he would have focused on it. Maybe it should have occurred to him; he wasn't naive. It should have occurred to me or to Byron White or to somebody. I just don't think that the notion that the Bureau was breaking into places to plant electronic surveillance devices that were illegal occurred to us. The reason that we didn't was. . . . It sounds silly that that wouldn't have occurred to someone, now, when I think back on it, but the reason was that there was such a formal procedure for authorization of wiretaps. Now, wiretaps were illegal in the same sense. So, it doesn't make any sense to have that formal procedure in the one case and no procedure at all in the other case. That's, I think, why the confusion.

Now, the Bureau knew perfectly well, in my judgment, that those things were all confused; but you just don't find that out from an organization like the Bureau until it's too late.

HACKMAN: Did he ever later wonder why [Herbert, Jr.] Jack Miller or [William G.] Bill Hundley or whoever didn't think about that?

MARSHALL: Not to me.

HACKMAN: One of the things that comes up later in '66 in December, on that back-and-forth between he and Hoover, is a change in a March 13, '62 order regarding unethical tactics. Do you remember this? There was an amending order to that earlier order and just the word wiretapping was removed from this order on unethical tactics by the Justice Department. Do you remember getting involved in that discussion at all?

MARSHALL: No, no.

HACKMAN: Or ever discussing with him what that change meant?

MARSHALL: No. I didn't know there was such a change. I still don't understand why it would have any significance, because the Department of Justice, the FBI with the approval of the Attorney General has been wiretapping for at least forty years. If that was classified as whatever that memo classified it as, as being unethical, I don't understand that.

HACKMAN: Wiretapping was removed on March 13, '62 on this amending order from the list of things that was considered by the Justice Department to be unethical.

MARSHALL: I don't see how it could under those circumstances have been on that list at the same time, in the first place, because all of these Attorneys General, all of them, had been signing papers that said you may wiretap in this case or that case. Now, if that amendment meant that that control was gone, I don't believe that. I don't think that the control was removed.

HACKMAN: No, it reiterated the fact that the Attorney General had to approve wiretaps. What one person has told me is, it was simply an updating or a bringing in accord with Justice Department regulations the practice which had really resulted from Roosevelt's executive order, back in '40 I guess.

MARSHALL: Well, that makes sense to me because I don't see why the Department of Justice, just sort of looking at it as an institution, would have a document that said something was unethical that Attorneys General, one after another, were consistently approving in a limited number of cases and with all the controls.

HACKMAN: Yeah. What do you know about the normal procedure? Can you describe the normal procedure at Justice on a wiretap request? How did it get up to Robert Kennedy?

MARSHALL: I never had much to do with it. Most of my knowledge of it is after I left the Department. But from what I've seen, and what I know is that the Bureau would send in a memorandum saying, "We want to tap this phone for this reason." The reason would have to be a national security reason; otherwise it wouldn't be approved. The Attorney General, if he approved it, would initial it, just initial it. Then it would go back to the Bureau; it wouldn't stay in the Attorney General's Office. It would go back to the Bureau's files, the Bureau would have the record, and the record would have the initial by the Attorney General. The Attorney General would presumably not know, or have anything more to do with it. Later that procedure was changed so there was a time limit on it, but it didn't used to have a time limit on it. That's the way the procedure worked.

HACKMAN: Okay. Did reports always come to the Attorney General on the results of what was going on?

MARSHALL: I don't think so. I don't think so. As far as I know, any reports that were relevant to the investigation; that is, there weren't reports about all of these miscellaneous things. The Bureau followed the practice that they didn't preserve the tapes; they reused the tapes. If they didn't get anything, they just reused it, and the tape was erased. So, whatever came on the tapes about somebody's mother-in-law or something like that was erased and was heard only by the agent that monitored the tape. The reports of that went to the Division, which would normally be the Internal Security Division. In the case of the Martin King tap, those reports went to the Attorney General, but I don't think that was the invariable practice at all. In fact, I doubt it. Copies of those reports went to me for some reason, and to the Internal Security Division.

HACKMAN: Let me just refer you to this, if I can find it, which is part of a letter which Courtney Evans. . . . It's dated the same day as the letter that was finally released in December of 1966. In that letter, I believe, Courtney Evans refers to a discussion that he had on July 7, '61 with Robert Kennedy in relation to FBI policy on bugging devices. Maybe he says "electronic surveillance" there.

MARSHALL: They call it "microphone surveillance."

HACKMAN: Did he ever talk about that later at the time of the '66 dispute and whether he remembered anything?

MARSHALL: Well, he did. He didn't remember this at all. He just didn't remember it at all. If you look at this memo and remember, this was in '61 and, you know, five months after he became Attorney General. I think the reason that he would not have remembered it and that it would not have sounded important to him at the time, would be because of this distinction that I make, which is a very important distinction between surveillance that is illegal and surveillance that is legal. There is nothing in here about trespass or breaking into anything. That's not clear, you know. If you had anybody read this, even a technically oriented person that didn't understand and thoroughly understand the way the Bureau works, they would not see anything here that was necessarily controversial at all. I can see now that Courtney Evans was, on instructions from the Director I'm sure, putting the Attorney General in a box and giving him information so that they could, if it ever came up again, say that he had this information.

But even looking at it now, you know, you have to be awfully damn, thoroughly acquainted with what the Bureau is doing and the way that it works to understand that. But I did, in 1966 when this thing came up and this dispute came up, talk to Bob Kennedy about it several times. He discussed with me what to do and everything. I went into it and I

talked to Courtney and Jack Miller, and I tried to get as well acquainted as I could with the facts, which hadn't been known to me because I was just as dumb about it as anyone else at the time.

He told me that he didn't remember this. And so, you ask me why he didn't remember it; I think he didn't remember it because it didn't sound important to him at the time. The reason it didn't sound important to him at the time is that he didn't know this twenty years of history. He just didn't know anything about it. He didn't know that he was being informed, in this sneaky way that the Bureau has of informing him, that they were making a major change of some sort. So, that is, I think, the explanation for that.

HACKMAN: Can you remember what his impressions were at the time of how well Courtney Evans was working out as the contact between. . . .

MARSHALL: Well, he liked Courtney and he trusted him, but Courtney was in fact, in a way, in an impossible position because he was working for Mr. Hoover and Bob Kennedy thought he was working for him.

Now, I think that you would find that there is no record in the Attorney General's office and there probably is in the Bureau's files, of these things. The Bureau has the only record of this. That was the purpose of it.

HACKMAN: What about one of the other points in the dispute then, the memo that Hoover released which Courtney Evans says in the end of that letter that Robert Kennedy signed as a blind memo? The one about the--I think it's August '61--surveillances in New York, the leasing of the phone lines in New York?

MARSHALL: That's the one I was talking to, the leasing of the lines in New York. That's the one I was talking to.

HACKMAN: He didn't remember then signing the blind memo? That's what you said?

MARSHALL: No, he didn't remember that, and he just didn't remember any of this. Now, he signed the blind memo; there's no doubt about it. But if you look at the memo, you could sign that memo and not have the foggiest idea what you were approving. The only way you would know what you were approving would be if somebody, who, for example, knew what I now know, came in and explained it to you. I don't think there was a soul in the Department of Justice that the Attorney General had anything to do with that could have explained to him what he was approving, if he was approving anything, by signing that memo.

HACKMAN: At the time of the dispute then in '66, was this something he was very concerned about, it becoming known that he had signed something without understanding?

MARSHALL: He signed all sorts of things. You know, someone would come in that he had confidence in. How else is the Attorney General going to operate? Courtney Evens comes in and says, "We need your initials on this," and so he initials it. "We need your initials on this in order to maintain proper surveillance over, you know, Tony the Barber or whoever it is."

No, he wasn't concerned about that. What he was concerned about was the charge which he considered to be unfair and untrue and unjust: that he had approved this illegal monitoring of conversations between Black and his lawyer and all of these. You know, the way the Bureau was dealing with this was as if Kennedy personally had known of all of those things and approved it and that that was the way he liked to do business. He resented that, because that wasn't true.

HACKMAN: Did he ever consider saying in December of '66 that, "The Bureau has deceived me because no one could be expected to understand what the hell was in that memo that they submitted?"

MARSHALL: I don't know. I guess he may have. I thought it was a losing battle, myself, which is what I told him at the time, partly for this reason, that you could never explain the thing publicly. I mean, either you looked like you were a fool who didn't know what you were doing as Attorney General, or you looked like you were responsible for it. The thing to do was to forget it. That's what I. . . . He never accepted that fully, but to some extent he did. But that's right. I mean, that's the way the Bureau catches people. They either aren't doing their job or they approved. You know, I must have initialed hundreds of memos to the Bureau myself that John Doar or somebody would stick under my nose. You can't operate any other way.

HACKMAN: Okay. Just a little more on Martin Luther King. You talked about wondering whether the Bureau was bugging or was. . . . ?

MARSHALL: Not at the time. It never occurred to me at the time.

HACKMAN: Yeah. When they first started to talk or to present facts about Dr. King. . . .

MARSHALL: Now I'm talking about bugs. You have to remember the difference between the taps and bugs, you know. . . .

HACKMAN: Right. But I'm talking about when they first bring information. This is before the tap is approved. Let's say in '61 and '62, when they're first bringing information both about the Communist connection and his private life. Where are they saying, or are they saying, how they gather this information?

MARSHALL: Well, you understand the tap had nothing to do with his private life?

HACKMAN: Right.

MARSHALL: The reason they got the information. . . . I mean, it goes back a long way. Part of it was surveillance of Stanley Levison, physical surveillance. Part of it was a tap which had been authorized years before--I don't know when, by whom--on Levison's own telephone on the grounds that he was a Communist agent, which was the Bureau's position all along and which I don't have any way of disputing. So, there wasn't anything in that that involved electronic surveillance on Dr. King at all. That was not in there.

Now, his personal life. . . . Let's see. I just can't remember when they started coming up with that stuff. I just can't remember when they started, but I think it was late. I mean, it was at the end of '63 or so. In fact, I'm not sure but that it was after President Kennedy was killed. But that had nothing to do with the tap.

What I think now is that they were planting bugs on him. What I thought then was that local police--and I don't remember anything from the District of Columbia, but there may have been--or someone else was hiring detectives or something or other and watching King.

I mean, that was in fact going on all the time. I mean, when Martin King would go to Birmingham, he'd have fifty police spies after him all the time, hiding under his bed for all I know. All the time, every city he went to, North and South. My assumption was that they were feeding this stuff to the Bureau; and because the Bureau and Hoover didn't like him, they were feeding it into us on the theory that, I suppose, that was going to change the way we dealt with him or convince us that civil rights was a bad idea or that Negroes were all evil people or something.

You have to remember that the Bureau got all sorts of information from local polices, of course. That information would come in and they'd say it was from NS-1 or something or other; you wouldn't know what that meant. But many times, what was characterized as the confidential informant was the police chief in whatever town it was.

HACKMAN: Yeah. Wasn't there some kind of authorization of an FBI

investigation of Dr. King--not involving a wiretap but some other kind of investigation--earlier than '63? Do you remember that being so?

MARSHALL: The Attorney General wouldn't authorize an investigation; I mean, he wouldn't have to. The Bureau had an investigative file, I'm sure, on Martin King and on Bayard Rustin and on everybody else under the sun that was involved. That's all I know of. Now, I don't mean by that that it wasn't a matter of great concern, because it was. Going right back to '61, information came from the Bureau that there was somebody, who was basically deeply involved, under control I suppose is the proper word, with the Soviet Communist apparatus, who was designated to get control over Dr. King. That was a matter of great concern, and that started in '61. An investigation of that allegation would be perfectly proper, but it wouldn't be something that the Attorney General had to approve.

HACKMAN: Sure.

MARSHALL: And in that sense there was an investigation.

HACKMAN: What about the rumors then that the FBI or someone played the tapes for the reporters and even some members of Congress? Were you getting that kind of feedback during the Kennedy Administration?

MARSHALL: No. No. Afterwards. That was afterwards. I mean, it was in '64, or the end of '63. No, let's see. It was '64, '64. It was just around the time that Mr. Hoover publicly called Dr. King "the most notorious liar in the United States." That was the first time--and that was the end of '64, after he was a Senator; I mean, Bob Kennedy was a Senator--that I heard from the people in Newsweek that they were playing tapes, unless they were faked, or evidence of something or other including Dr. King and other people, to news people. I don't know how many. That was the end of '64. I thought it was outrageous.

HACKMAN: That the Bureau had played these, though?

MARSHALL: That the Bureau.

HACKMAN: Yeah. Did they say where the Bureau said they got them? Their own efforts?

MARSHALL: I still thought at that time. . . . The reason I know it was the end of '64 is that Nick Katzenbach was the Acting Attorney General at that time and I was resigning. It was difficult to resign. I mean, it wasn't personally difficult; it was physically difficult to resign. President Johnson didn't want me to resign. I wrote a letter of resignation and no one paid any attention to it. I wrote another letter of resignation which was acknowledged. Then the President asked me to come down to Texas with Nick Katzenbach. I went down there to his ranch for a day. He didn't want me to resign; that was the purpose of the trip.

It was right after we'd heard this. I remember talking to Nick about it. It didn't occur to either of us that the Bureau was doing that itself, but we did believe that the Bureau was leaking it. But not that they'd done it. We thought it was so awful and so dangerous that we told the President about it, and he said he didn't know anything about it. I don't know whether he did or not know anything. But that's why I remember when it was.

HACKMAN: Yeah. Did you ever hear that these were also played on the Hill?

MARSHALL: No, although I wouldn't doubt it, but I never heard that.

HACKMAN: In terms of the actual wiretap on Dr. King, can you recall over approximately what period the Bureau requested it and when in fact it was authorized? What were the immediate events of the authorization?

MARSHALL: Yeah. I've tried to remember this, and my best recollection of it--it could be wrong because I don't have any records or anything--is the Bureau was on this kick right from the beginning of 1961, and I don't know how long before that. In '61 and then again in '62 and then again in '63, I was asked to, and did, talk to either Dr. King personally or someone for him about it, about Stanley Levison is the man's name.

HACKMAN: Right.

MARSHALL: And about the other one.

HACKMAN: [Hunter Pitts] Jack O'Dell?

MARSHALL: O'Dell. Hunter Pitts O'Dell. So, that's the way we tried to deal with it. The reason that he approved the tap, which was why I think I've got the date right which I think was in October of 1963 . . .

HACKMAN: 10/10/63 is what I've seen.

MARSHALL: Yeah. . . . is that after the third time or the fourth time, or whatever it was, when the President had talked to him and I'd talked to him and Bob Kennedy had talked to him and I talked to him again, which was in June of '63, right after the legislation was introduced, and tried to impress on him the seriousness of this, just assuming that it was true or even if it wasn't true, the seriousness of it.

There was a report in that was based, I suppose, on a tap on Levison's phone again that they were back in touch with each other as if nothing had happened. And that's what decided him to do it, that there didn't seem to be any other course of action then. If you really wanted to find out what was going on, that was the only way to do it. And so he did it.

The whole potential effect of all that with that bill in Congress with so many people looking for an excuse not to vote for it. . . . I suppose that that's not a good reason for approving a tap, but, my gosh! I still don't know what was wrong, I mean, what other course he could have taken. I mean, if you accept the concept of national security, if you accept the concept that there is a Soviet Communist apparatus and it is trying to interfere with things here--which you have to accept--and that that's a national security issue and the taps are justified in that area, I don't know what could be more important than having the kind of Communist that this man was claimed to be by the Bureau directly influencing Dr. King. That's what the charge was by the Bureau. And you really have to know whether that's right or wrong. We never really believed that he was in any real sense, and he wasn't.

HACKMAN: In your contacts on the Hill in '63 and '64, was there evidence on the Hill that some people were aware of this information?

MARSHALL: Well, we'd had to tell some of them, as I think we'd said.

HACKMAN: Yeah. I think you said you went up and talked to [Richard B.] Russell, Senator Russell maybe?

MARSHALL: And Senator ^{As Mike} [Michael] Monroney.

HACKMAN: And Monroney.

MARSHALL: There were a lot of charges about Communist infiltration into the civil rights movement, and Bob Kennedy had to sign a letter which we wrote with great care because he's a very, very honest fellow and he wasn't going to sign something that was wrong. It said that none of the leaders of the civil rights movement were Communists and that there was minimal, or peripheral, or no significant Communist influence on any of them. Well, he signed that, and he believed it. But at the same time we knew, and it wasn't only a question of being honest, though that in itself would have been enough of a reason. There was also the fact that the Bureau probably was feeding some of this information. So, for everyone

that he sent that letter to, we went and then disclosed, not in the detail that I am, some of these facts. So, Senator Monroney was one; Senator Russell was one; and I'm sure there were others. Senator Monroney wrote the first letter was the reason, so his letter and the answer to it were widely publicized.

HACKMAN: What was Robert Kennedy's opinion of Martin Luther King then, subsequently over the years, just in terms of him as a person and in terms of his ability as a leader, as a civil rights leader, his tactics?

MARSHALL: Well, of course, he thought that Martin King was a great leader, which was obvious enough. I wouldn't say that they were sympathetic personally, that there was any warm, personal relationship. They just never had that kind of relationship. The business with the Bureau was a source of great concern, and it was of great importance, but he never really believed that Communists were influencing Martin King or that that was anything but a lot of nonsense. He was deeply, deeply affected by his death, as you know. Of course, that was later.

The charges about Martin King's personal life, I suppose, affected his feelings toward him in a way--I mean, if you believe they're true and there wasn't any reason not to--because Bob Kennedy just wasn't that kind of a person. He didn't understand that, you know, and he didn't like it. He wouldn't approve it. But I don't think it affected him in any other way.

HACKMAN: Can you remember him being critical of any of the specific moves, in the sense of the civil rights movement, that Dr. King made, specific campaigns?

MARSHALL: Not really. He got constantly more committed to that than he was. Until the end of 1963, every big demonstration or turmoil that Martin King led was a problem for the President, so that affected the way Bob Kennedy would look at it. I mean, he would look at it as a problem. But even at that he was never unsympathetic to it. In fact, he was really very sympathetic. He knew perfectly well that, if he were black, that's exactly what he'd be doing. So he was perfectly sympathetic to it, but, nevertheless, it was a problem for him. For that reason, the time of the Birmingham demonstrations and the time of the Freedom Rides. . . . I don't think Martin King as a person was involved in that really. He viewed those as a problem, and so he'd say, "Why do you do this?" But he was really sympathetic to them, all in all. He was really sympathetic to that cause and to everybody that was involved in it. After he didn't have that sort of institutional reaction, he was even more so.

But neither he nor President Kennedy could ever, ever understand this business about the restaurants and so forth, and the theaters. He always talked about it and thought about it in terms not just of the adults but of the children. He'd always talk about how he would feel if it were his children who were being excluded from these places.

BEGIN TAPE II SIDE II

HACKMAN: There were just a couple of questions left over on the wiretap thing. One is if you can remember at all in the review when you were going to put together the legislation in '62. Can you remember what the FBI's viewpoint was on wiretap legislation and what impact that had on the way the legislation was written?

MARSHALL: I never talked myself with the Bureau. That would have been done by Nick and the Attorney General.

[Interruption]

HACKMAN: On the '62 legislation, you don't remember personally talking to the FBI?

MARSHALL: No. The bill that was presented by the Administration went much further in controlling wiretapping than the Bureau liked. So, I know that their position was that they didn't like that bill, but I never discussed it with them. I don't know what kind of a bill they were looking for.

HACKMAN: You don't remember that potential FBI opposition, particularly in terms of the Hill or leaks to the press or whatever, was a factor in defining limits of the bill that possibly would have gone up?

MARSHALL: The attitude of the Bureau is important, obviously, in getting legislation, so, it was a factor. It was discussed, but my memory is poor and I wasn't that involved. I was involved, but I wasn't responsible.

HACKMAN: The other question then is, how did those Courtney Evans letters come to be written as early as February '66? Were you and Robert Kennedy talking that early about the need for something like this, a potential dispute with Hoover or whatever? Or do you remember?

MARSHALL: Well, when was the Black case?

HACKMAN: Let's see. It started in '64.

MARSHALL: But when was the disclosure of . . .

HACKMAN: By the Justice Department to the Supreme Court?

MARSHALL: Yes.

HACKMAN: Let's see. Thurgood Marshall. I think I've got that somewhere.

MARSHALL: I think those letters relate to that issue and that the timing

was tied into that. It was either just before or just after.

HACKMAN: I think it must have been just after because I believe. . . .

MARSHALL: Well, he did talk to me as well as to other people. You must remember that Nick Katzenbach was the Attorney General at the time. I just talked to Nick about it. It was obvious to me and obvious to anybody, including the Senator, that memories were unreliable, and that, therefore, before he answered the charges that were really directed against him by the Bureau, we collect together, in written form, the best recollection that everybody had about that issue. Courtney was a critical element in them. That's why those were written. It was to get down in writing his best recollection.

HACKMAN: I haven't seen any of the other ones, but can you remember what other kinds of things were put together or whose testimony was put together?

MARSHALL: Jack Miller. Nick Katzenbach showed me the record that was available in the Department of Justice, that is the trail of memoranda, which was long. It went back to at least 1952, and I think before then. So, I saw those documents, but I never wrote anything.

MARSHALL: Well, I'm foggy. I remember talking to the Attorney General, I mean both the past Attorney General and the then Attorney General, about this matter by telephone when I was in Maine in August of some year. That must have been either '65 or '66. I think that, judging from the dates of Courtney Evans' memoranda, it must have been '65. Now, why there was that time gap in between. . . . What the Senator decided to do was to get somebody that had time to collect those recollections, including Courtney; and the person he asked to do that was Jack Miller. So, Jack Miller did that detailed work, and I can't remember it.

What I did was talk to Mr. Katzenbach and see him and see what the files available to the Department as such, which were different from the files available to the Bureau, showed. Everything that they showed is basically public.]

HACKMAN: Can you remember what Robert Kennedy's attitude was toward Attorney General Katzenbach through this whole thing, particularly the position he took in public vis-a-vis Hoover's position?

MARSHALL: Well, his best recollection was that he had not approved those electronic surveillances. There was no real argument that he had. He never knew specifically that there was a bug on Black that recorded conversation between Black and his lawyer; there was certainly no argument as to that. The argument was that he knew what procedures the Bureau was following, which didn't include specific approval of any bugs, and since he didn't stop that, therefore he approved it because prior Attorneys General had approved it. That was the argument.

That had never been explained to him, and therefore, his view of it was quite simple. His view of it was that the Bureau was doing this without his knowledge or approval. That was essentially correct. That's what he wanted Mr. Katzenbach to say.

Well, Mr. Katzenbach was the Attorney General; he had these cases to deal with; and he had the trail of memoranda that the Bureau had available to make public if he got in a big argument over this, which Senator Kennedy did not have. He didn't know what [Herbert, Jr.] Brownell had written to the Bureau, or the Bureau had written to Brownell or [William P.] Bill Rogers, or even what he himself had. He had no recollection of that leased line business in New York. He didn't have that file available to him. That's why Mr. Katzenbach was, in a way, more cautious than Senator

Kennedy would have liked him to be in the way he worded it.

What he said was, as I remember, "To the best of my knowledge, Attorney General Kennedy did not know of these surveillances." But at the same time, he defended the Bureau by saying that "I can understand why the Bureau would have believed that he did." That was sort of, "I believe both of you," and yet the two people were saying entirely contradictory things.

HACKMAN: Was that spelled out to Robert Kennedy, Katzenbach's reasoning for this, the files and everything?

MARSHALL: I told him, but he didn't like it.

HACKMAN: When can you recall ever discussing with Robert Kennedy-- either during the Kennedy Administration or later--[Robert G.] Bobby Baker and the possible investigation of Bobby Baker and and then the way it developed?

MARSHALL: I don't remember ever discussing that with him.

HACKMAN: Never later either, after the Administration is over?

MARSHALL: No, I didn't have that kind of curiosity. I do remember this kind of discussion with him in early '64, I guess. There was all sorts of evidences that President Johnson thought that people in the Justice Department, headed by Bob Kennedy, were in some sort of conspiracy against him and the Bobby Baker affair was mixed up in that conspiracy. There were just all sorts of indications of that. I can't remember what they were. Well, that was just not true, just not true. That's the only time I ever remember any discussion about Bobby Baker.

I knew Bobby Baker casually or vaguely because he was still whatever they called him for the Senate Majority leader in 1963 when that bill was sent down. He advised President Kennedy and the Justice Department that the bill didn't have a chance, not a chance. That's what he told Senator [Michael J.] Mansfield. Senator Mansfield didn't believe it did have a chance. That's what he told the Vice President.

HACKMAN: Do you ever remember anyone being put out of the Administration

because of any of the reports that were going over on them to the White House?'

MARSHALL: No, I couldn't, certainly not while Bob Kennedy was still in the Justice Department. I left the Justice Department shortly after that. Now, there were some people that could not, I suppose, have comfortably stayed in the Justice Department after Bob Kennedy left because they were so deeply involved--going back to 1960, which was sort of the critical point for President Johnson--with the Kennedy family. [Joseph F.] Joe Dolan, I would think, would be in that category. But I don't remember anybody having to leave at that time. There's no doubt that the Bureau effectively got rid of [William] Bill Barry because of his association with Senator Kennedy. That's minor, I suppose.

HACKMAN: Can you remember ever talking to him about the publication of The [Joseph M.] Valachi Papers? Did you get involved in that at all; or the non-publication?

MARSHALL: No. I knew about it, but I wasn't involved with it. I don't remember whether he ever asked me anything about it or not. Nick Katzenbach dealt with that.

HACKMAN: That's all I have previous to the assassination--that last wasn't previous to the assassination--but can you think of other things that stand out during the Justice Department period? Any non-civil rights things that you got involved in at Justice that we haven't talked about?

MARSHALL: Well, [James R.] Hoffa, organized crime, the Teamsters business. He used to have periodic meetings that dealt with that whole area, not just Hoffa himself, but the whole area of corruption in the labor movement and the organized crime. I remember those meetings, but I don't think there's anything there except details.

HACKMAN: Would Walter Sheridan have been at all of those meetings, or most of them?

MARSHALL: Yes. Yeah.

HACKMAN: Maybe we can talk to him about those.

MARSHALL: Yeah. And the lawyers that dealt with that, [Charles] Charley Shaffer--there were a whole lot of them, very good--and, of course, Jack Miller.

I remember his conduct at the time of the Cuban missile crisis, but I didn't have anything to do with that. He was very distracted. Let's see, the only incident I suppose I could add to that that I don't remember recording--maybe I did somewhere--was about the Barnett contempt case. Is that in any of the oral histories?

HACKMAN: In relation to the Cuban missile crisis? No, I don't think so.

MARSHALL: Well, the riots at Oxford were at the beginning of October 1962. The missile crisis was in October. In the meantime, the Court itself really brought this contempt case against Barnett, which we were in charge of prosecuting. There was either a hearing scheduled or an order potentially coming down from the Fifth Circuit right at the time of the missile crisis. This is my only involvement with the missile crisis.

One night during that week, the Attorney General, Bob Kennedy, called me and said that the President was concerned that the Court would issue an order for Barnett's arrest and that we would have to use the Army, which was the indication that we would, if we had to do that (arrest Barnett). I remember at one time there was a rumor that he was going to be arrested and there were several thousand people that came and surrounded the State Capitol there in Jackson to protect him.

So, Bob asked me if I could do something about it. What I did was call Judge [Elbert Parr] Tuttle, who was the Chief Judge of the Fifth Circuit, and tell him, which is what I was told I could tell him, that we were faced with a possible military confrontation with the Soviet Union in the next few days and that, accordingly, it would be potentially disastrous if they issued an order which involved the use of the military in Mississippi at the same time they were being moved somewhere else for another purpose. So, Judge Tuttle accepted that and said that if they went to the Court with it, he'd talk to the Court and that they would not issue an order. He asked me where this was, because at that time it wasn't known, and I said it was Cuba. That was the only information I gave.

It was at the same time, I think, that we went down; Bob Kennedy and me and Nick--probably Nick, and I can't remember anybody else; maybe Ed Guthman or John Seigenthaler--went down and had lunch during that week with Byron White at the Supreme Court. The reason for that was that he'd made the date before, and he just didn't want to change it then. Even though those meetings were going on of the National Security Council periodically, there wasn't one. I suppose it was a distraction. The reason it had been set up in the first place was that he wanted to get Byron's advice about the Antitrust Division. He had put him in charge of the Antitrust Division.

I know that it was at the same time because everybody had instructions about these helicopters that were supposed to pick you up. The idea was that you were going to desert your family and everything and get in a helicopter and be flown off to a secure place in West Virginia, get inside a mountain down there. Nobody would have done that; it was a bad idea.

Now, let's see, there's that. There's the business about the Vice Presidency.

HACKMAN: Did he ever talk about that?

MARSHALL: Yeah, yeah.

HACKMAN: You mean in '64?

MARSHALL: Yes, in '64.

HACKMAN: Let me just ask you while you mention that: Did he ever talk about the Vice Presidency in 1960, and his role and where he really stood on Johnson as Vice President, and what he did, give any clear explanations of that whole situation?

MARSHALL: Well, I never would ask him questions like that, just because my curiosity doesn't run in that direction. I don't think that it is true that he was opposed, as some people have said, but not all people. I don't think that it is true that he was opposed to having Johnson as Vice President. In fact, I know that wasn't true. I must know that because of something he said, but I don't have any other recollection.

HACKMAN: Did he ever talk about what they had planned to do in '64 in terms of the Vice Presidency, ever any question that they would not have Johnson on the ticket again, or did he ever talk about that?

MARSHALL: The only thing I can remember about that is that after he left the Department of Justice and went into the Senate--you know, I was not a political adviser or something; I was more a friend. My relationship with him was sort of connected with his family and the Presidential papers, the [William] Manchester book, that kind of thing that was personal, rather than public things.

One of the things was that I was sort of an ambassador for a while with Mrs. [Evelyn] Lincoln. Mrs. Lincoln wrote a book in which she had an incident in which she claimed that President Kennedy came in to her and said something like, "We're going to dump Lyndon Johnson and nominate Terry Sanford in 1964." I remember he commented on that to me that "that was a silly, absurd story." I think he said, "Of course, we had no intention of doing that." And, in addition, he said, "Can you just imagine the President coming in and telling Mrs. Lincoln something like that?" That's all I remember.

HACKMAN: You were going to talk about the Vice Presidency in '64. Maybe you can include in that any discussions you had after the assassination about what he was going to do in the future. Did you talk about other things in the spring?

MARSHALL: Well, he went through a period when he didn't know what he was going to do at all, even whether he was going to stick it in the Justice Department. Then he sort of broke that tie; I can't remember when it was, but maybe in January of '64, sometime. I remember he came back. He'd been away for a long time; he'd been skiing or something over the holidays. He came back and called me up. You know, he came into his office and said, "Do you want to go for a walk?" So, we went out and walked around the Mall. I hadn't seen him for weeks. He'd been in a little after the President was killed, but not much; he was not focusing and didn't know what to do. But he told me on that walk that he decided he was going to stay in the Department, for a while at least. So, that's personal conversation.

Sometime, and I can't put my finger on it, but sometime between that and the spring, he had many people come to him and say, you know, "We're looking to you. We need you. Don't give up," and all this kind of thing, all along. I remember that happening on all sorts of occasions. He decided at some point that it was his responsibility because of these people, really--and he mentioned some of them to me once, but I can't remember who he referred to--his responsibility to these people to make himself available for the Vice Presidential nomination in 1964. Once he decided that, that became known. I don't know how such things become known, but they just become known. That put the President in this box because he didn't want that, and how was he going to shut it off? Then he went through this nonsense about not letting any Cabinet member get it.

I never thought he should do that, myself. In fact, the one time he asked me about it, I told him I thought he would just go climbing the walls within two months if he did that. I still think so. But he decided to do it for the reason I've stated.

HACKMAN: Did he ever comment on how he thought that kind of relationship could work and what kind of a role he could have as a Vice President under Johnson? Had he thought it out?

MARSHALL: Well, I think he thought it through to some extent and he knew that he wasn't ever going to be buddies with the Vice President, but he thought that he could work out assignments and that he could be helpful to President Johnson in getting specific things done. That's what he thought.

I think it was not so much a desire to be Vice President as it was a feeling of, how was he going to meet this obligation to all these people that had come into the government, particularly people that came in the government, but a lot of people that weren't in government, too, that had sort of come in because of his brother? A lot of people in the country had all these letters, so he just felt the weight of all those people on him. He was seeking a way to be responsive to that.

HACKMAN: Did he ever talk about how he might--probably realizing that Johnson wasn't going to pick him--force the situation, or what could be done to get the nomination?

MARSHALL: No, he didn't. I don't know whether he thought about it, but he didn't. . . . But there were great pressures. Once this availability, I'll call it, became known, there were great pressures, just automatically without him doing anything, put on President Johnson. President Johnson scoffed and reacted.

HACKMAN: Did he ever talk about the things that Paul Corbin was doing in New Hampshire and Wisconsin that were creating such a stir in early '64 in those primaries, what he thought of that whole thing?

MARSHALL: Probably. He was always sort of amused and resigned about Paul Corbin. Paul Corbin was never anything but a source of trouble to him. Paul Corbin was a vehement advocate of Bob Kennedy for anything, so he let him. Other than finding some reason to send him to Bali, you couldn't keep him Corbin out of that kind of trouble. I really think that it came up, but it was sort of as a joke.

HACKMAN: How did he feel about Corbin personally? Was he fond of him, or did he dislike him?

MARSHALL: No, he didn't dislike him, but he was awfully irritated. As I say, Paul Corbin was constantly causing him problems. On the other hand, he was a very loyal, dedicated, hard-working fellow and those were traits that he respected.

HACKMAN: Can you remember discussing other things in the spring of '64 that he might do? People have talked about Ambassador to Vietnam or going to Oxford.

MARSHALL: Well, he offered to do that, as you know; I mean, go to Vietnam. He also talked about teaching. I can't remember when, but whenever you'd talk to him about the future--I didn't talk to him about the future very much and he didn't think about the future very much because he knew that things were so unclear to him--he'd talk about teaching. If he talked about anything other than public service in government, he'd talk about teaching.

The New York Senate came up twice in 1964, once when he said he wouldn't do it

HACKMAN: What caused that on-and-off attitude?

MARSHALL: Well, I think it was partly the Vice Presidency business, and it was partly the change in New York, the real inability of the people in New York to come up with somebody who was more identified with New York, who was there, that was a good candidate. So, the growing unanimity of the Democratic leaders in New York that he should come up and do that was the other factor. I don't know any details of this.

HACKMAN: Do you remember what his concerns about going into New York were, what he saw as disadvantages of going as a Senator in New York?

MARSHALL: I think that he saw disadvantages; he didn't know whether he'd like being in the Senate. I thought that he should do that, myself.

HACKMAN: Can you remember, after he definitely realized that he wasn't going to be the vice presidential choice, who his own choice was for the Vice Presidency? Did you ever talk to him about that?

MARSHALL: I don't remember. It wasn't Senator Eugene J. McCarthy.

HACKMAN: I'm sure of that. I was thinking some people have said that he may have suggested Robert McNamara. Do you know anything about that?

MARSHALL: No. It seems unlikely because of the way the President handled it. What the President did was call him over to the White House and then have the conversation with him and tell him that he wasn't going to have him. You know, first he Johnson tried to do that through McGeorge Mac Bundy, which irritated Bob Kennedy a great deal; I mean that he didn't do it directly, and that Mac Bundy would sort of act as a Then he called him over there, and almost by the time he got back to the Department of Justice, the President had this news conference which said, "No Cabinet officials." So, he ruled out McNamara at the same time. But I don't know; he never told me that. He had a very high regard and personal liking for Bob McNamara. So it's perfectly possible, but I never heard of it.

HACKMAN: Yeah. After he decides then to run for the Senate in New York, what's your role in the campaign? I know you were involved in some discussions out at Glen Cove.

MARSHALL: Well, I didn't have much of a role. I went up there two or three times I suppose, and saw him and talked to him. I was out at Glen Cove and in whatever apartment it would have been, maybe Steve's Stephen E. Smith, I don't know. But, in any event, I saw him; and I went out with him once on the streets during the campaign. I talked to him, I suppose, on the phone every once in a while, but I was not involved in the campaign. I was still in the Department of Justice, and I didn't have time, among other things. And I'm no good; I mean, I'm not of much use in a campaign, anyway.

HACKMAN: Can you remember there being any concern at Justice about involvement of Justice Department people, yourself and Oberdorfer and John Douglas and whoever else on the . . . ?

MARSHALL: John Douglas did quite a bit of work on the campaign. I don't remember about Lou. I'm sure that anybody would have realized that that wasn't the favorite activity that President Johnson would have chosen for someone in the Justice Department, but that wouldn't have caused the slightest hesitation, that factor, except maybe with Nick. After all, he was the Acting Attorney General at the time.

HACKMAN: You don't remember any specific complaints coming over from the White House or the DNC [Democratic National Committee] or something like that?

MARSHALL: Not to me, but they wouldn't complain to me because they would have considered that to be a dry well.

HACKMAN: Can you remember, in those meetings at Glen Cove or the apartment in New York, any basic decisions that had to be made about what kind of campaign you were going to run, how you were going to campaign against Keating?

MARSHALL: Well, one of the meetings involved a debate. It was at that time that, I think, he went out of that meeting, and I thought it was rather good, and he went down and Keating was debating an empty chair. Bob Kennedy showed up and demanded to be let in. Keating wouldn't let him in. That is the only thing I can remember.

HACKMAN: You don't remember what his own feeling was at the meeting about what he was going to do, whether he obviously felt he would go debate Keating or whether he had serious reservations about doing that?

MARSHALL: Well, he had reservations about debating him under the way it was set up. Well, I can't remember; I just don't remember. I was not around that much to know. I know that at one point in the campaign, and that was one of the reasons I went up there once, he got very discouraged. I don't remember why exactly, but it just wasn't going well. I talked to him on the phone, and he really sounded discouraged. So, then I went up to see him. That was one of those occasions, but I can't remember which. But that's an impression. I can't remember any of the details; and I really can't remember the issues.

There was an issue over Keating's voting record, whether it was fairly dealt with.

HACKMAN: Particularly the nuclear test-ban thing; that was where it became most controversial.

MARSHALL: Yeah. But, see I didn't know.

HACKMAN: And the General Aniline and Film Corporation thing also came up as an issue. Can you remember doing anything on that?

MARSHALL: I don't remember doing anything that was sort of specifically helpful. I may have, but I just don't remember.

HACKMAN: What kinds of family matters did you get involved in during '64? Were there any John F. Kennedy Library things that early or anything on the Manchester book that early?

MARSHALL: No, at least I was not involved with the Manchester book at that time. On the Library, the only thing that I did for him on that was that he got the Kennedy family lawyer, whose name is William P. Bill Marin, to talk to me about the document, the deed of gift whereby these papers were given to the Library by Mrs. Kennedy. So, I sort of went over that with him, but it was all concluded. It was a tax problem. It was an arrangement with the Treasury Department that had to do with the estate, which was important, and you couldn't tamper with the agreement without tampering with that tax problem. That's the only thing I remember in '64. Of course, as I say, I was still in the Justice Department; I was still rather busy. The Manchester book arrangement was made at that time, but I didn't have anything to do with it.

HACKMAN: Yeah. Can you remember discussing with him when he decided to leave Justice, his successor? Was Katzenbach clearly the person who was . . .

MARSHALL: He recommended Katzenbach.

HACKMAN: Can you recall discussing with him what he might be able to do, if anything, to get the President to make that appointment, or whether he felt he should just stay out of it?

MARSHALL: Well, he asked the President to make that appointment when he told the President he was leaving to run for the Senate.

HACKMAN: What in your own mind finally brought the President around on that appointment?

MARSHALL: Well; of course, I'm just speculating; I don't have any information. The President never discussed that with me. He didn't appoint Nick Attorney General until after I left, as I remember. I think it was January '65. I suppose that the President was putting him through his paces is the way I would view it. I thought it was rather offensive in a way, myself, and degrading. That's what I think the President was doing, but I had no information.

HACKMAN: Did you discuss with him what you were going to do in the future, going back to Covington & Burling for a while?

MARSHALL: Well, I discussed with him in January, sometime in early '65. . . . He asked me once if I wanted to be general counsel of IBM [International Business Machines] and I said, "No, I wouldn't consider it." I guess [Thomas J., Jr.] Tom Watson had asked him for his recommendations, and so then he gave other recommendations. I changed my mind about that afterwards.

The thing I did discuss with him was going to Yale and being dean there. I told him right all along that I was interested in his future. In fact, one of the reasons that I went to IBM was to move to New York. But I talked about Yale; he thought I should do that, but I decided not to.

HACKMAN: When you came to New York and when you came to IBM, did you talk about what kinds of things you might be able to do, on his behalf or with him, after you came up here?

MARSHALL: Not like that. He got [Anthony J.] Travia or whoever was the Senate Democratic leader up here . . .

HACKMAN: [Joseph L.] Zaretzki.

MARSHALL: . . . both of them, I think, to name me to the temporary state commission on constitutional amendment. So, he wanted that. And then also, although he never did it, he asked me if I would be in on this committee to nominate people to West Point; but he never put me on it. I had to leave the temporary State commission--it was obviously a waste of time anyway--because of the Presidential commission on the draft [National Advisory Commission on Selective Service].

HACKMAN: Did you talk to him about that after you were on the Selective Service thing?

MARSHALL: I talked to him. He was out somewhere way up in western Canada, but I called him up and told him that President Johnson had asked me to do this. It was obvious that President Johnson--I mean, he might have had other reasons, but one of the reasons that he had to ask me to head that Commission was because of my identification with Robert Kennedy. I had some identification with him. So I asked what he thought about it.

HACKMAN: And he had no objections?

MARSHALL: No.

HACKMAN: Any strong feelings about the subject matter that he impressed upon you throughout that study?

MARSHALL: Well, the critical issue all along, in my mind, was this student deferment. I became more and more convinced that the student deferment was wrong. He, during the same period himself, became also convinced that the student deferment was wrong, but I would have been convinced of that whether he had been anyway. I'm sure he made up his own mind about it.

Edward M. Ted Kennedy, who was much more closely involved with the draft and knew much more about it than his brother, didn't, for a long time, take a position on the student deferment; although, he finally did, too.

HACKMAN: Can you recall talking to him about his general feelings about people staying on in the Johnson Administration? Can you remember him being upset with any people who transferred loyalties quickly from John Kennedy to Lyndon Johnson?

MARSHALL: Well, no, not in general. I mean there may have been particular people but, for example, Larry O'Brien. I often heard him talk about Larry O'Brien, and he completely understood and accepted why Larry O'Brien would agree to be Postmaster General and stay in the Johnson Administration. He didn't have any feeling that everybody should desert ship just because he wasn't going to stay there.

HACKMAN: You don't remember people who particularly disappointed him, who you felt had been loyal?

MARSHALL: Well, as I mentioned, he was really upset with Mac Bundy over that one incident which he couldn't understand. He couldn't understand why somebody would agree to be intermediary between the President and the Attorney General on that kind of thing, forgetting the past; he just couldn't. That was a specific incident, but I don't think he certainly felt that Bundy should leave, or anybody really. He was very close to Bob McNamara. Bob McNamara stayed on as loyal, maybe overly loyal to President Johnson, all that time in matters he had grave doubts about himself. And Dean Rusk. I don't think he felt any resentment in general. I can't think of anybody that he sort of thought of as a turncoat or something.

HACKMAN: What can you remember about your conversations with him on the Voting Rights Act of '65?

MARSHALL: Frankly, I don't remember even having a conversation with him about the Voting Rights Act in '65. He was going to support the Voting Rights Act.

HACKMAN: Okay. When you were sitting with the Administration group that was drafting this legislation, you don't remember him feeding in, or attempting to feed in, any particular viewpoints as to what should go into the bill or how it should

be written or anything?

MARSHALL: Well, I don't remember, but that may be just my memory. That's something more . . .

HACKMAN: Yeah. Can you ever remember him being upset about not being taken in, so to speak, and consulted more closely on any of this?

MARSHALL: Not with me. He may have been upset.

HACKMAN: At the time you were dealing with, I guess, Humphrey and Katzenbach and these people, the Leadership Conference was, I think, drafting an alternative bill.

MARSHALL: In '65?

HACKMAN: Yeah. They were meeting and drafting an alternative Voting Rights Bill. Can you remember that having any specific impact on what you people were putting together?

MARSHALL: My memory about that '65 act is obviously no good. I can remember the politics and a good deal about the '64 act. I remember I was sort of hired as consultant by the Justice Department on the '65 Act, but I'm damned if I can remember any of the politics of that. The only issue that I remember as being sort of a difficult liberal-against-Administration issue, was on the poll tax. I remember that.

I don't know why people leave themselves in positions, but we dug ourselves into a position; and we were in a position, I mean the Administration, you know, where it didn't really make a hell of a lot of difference. It was really your judgment about how the Supreme Court was going to deal with the issue. So, that was just a difference of opinion. It shouldn't have been allowed to become a big issue, but it became a big issue.

I don't remember any other big issues. I'm sure there were some because there always are going to be big issues with the Leadership Conference and their group of Senators who don't include some of the Senators the Administration would always feel they needed, like Dirksen and Leverett Saltonstall and Roman Lee Hruska and George D. Aiken and those Republican Senators.

HACKMAN: Within the Administration drafting group, can you remember, on the poll tax thing, was the concern with possible defeat for the bill if this was put in; or was the attitude that, well, there was already litigation proceeding on this and that would take care of it?

MARSHALL: Well, the position in the first place was completely substantive,

not a political position. Of course, then it grew into political, and there became the fight over it. I suppose, there was some fear that the bill would lose, that if you gave in and sort of accepted the Leadership Conference position and the Senators identified with that, which would have included both Kennedys, that then you'd lose Senator Dirksen or those other people who were sort of going up and down like they always did. So, it became a political issue of that sort. We felt. . . . I mean, I remember. I agreed with it, although I didn't like being in that position much, but I remember I agreed with it that the Administration and Nick should stick with the position we'd taken, whatever the hell it was, on the poll tax. It was really that the Supreme Court case was going to decide the issue, and that's what they did.

Some of it comes back to me. I remember Senator Mansfield looking at me sternly and saying, "Now, are you going to stick with us on this? We don't have any other arguments." I said, "Well, I'm sticking with you."

HACKMAN: Well, can you remember talking to Robert Kennedy and Edward Kennedy then about that?

MARSHALL: I remember talking to Edward Kennedy but not Robert Kennedy about it, strangely enough.

HACKMAN: And advising him of the Administration's position, I presume?

MARSHALL: Well, yeah. I'd explain to him why I agreed with it, I suppose. I had lunch with him one day, and he had his staff people. But I just don't have any recollection really about discussing that with Robert Kennedy. You see, there was no way of getting the Administration to take him in as sort of a leader on that bill, in the first place because of his position as a brand-new Senator, you know, a junior; and secondly, because you wouldn't do that with a New York liberal, no matter what you were doing really. Always you had these other senior people. You had Phil Hart, and then you had the whole Republicans to deal with. So, you'd never do that, except for the personalities involved. I have no recollection of ever talking to him about that.

HACKMAN: What about his amendment, the American flag amendment, the literacy, the Puerto Rican vote, can you remember?

MARSHALL: Didn't we support that?

HACKMAN: Yes, he submitted that as an amendment; and it passed fairly easily, which surprised him a bit, from what I've heard, that it went through so easily. I don't understand this and perhaps you don't remember, but there was some issue as to how you justify that amendment. What amendment of the Constitution do you use to justify it or something? Peter Edelman said that there was some

discussion on which one you ground it in.

MARSHALL: I do remember. Now, I remember that he had that amendment; and, of course, I wouldn't dream of having opposed an amendment coming from that source. You know, in 1962, sort of Robert Kennedy and I, all by ourselves, devised a voting rights bill and sent it down, without consulting anybody. It was rather a silly thing to do, I suppose, but we thought it was rather shrewd at the time; and that included the Puerto Rican amendment.

HACKMAN: So, there wasn't that much that had to be done?

MARSHALL: No, I don't think so, but I guess I remember talking to people about it, vaguely. I can't remember what constitutional theory we used. I think it was that if we were going to educate them in Spanish we ought to let them. . . . I mean, if the public schools were run in Spanish, then we shouldn't disqualify them from voting because you taught them a language that wasn't English.

HACKMAN: Can you remember having conversations with him about the implementation then of the voting rights Act in '66, '67, '68, his impressions of the job that the Justice Department was doing?

MARSHALL: I do have, vaguely. Of course, I didn't know much about it except what I saw in the newspapers. He didn't think they were being aggressive enough, and I think that probably that was Peter Edelman or some of these people in his office. I didn't disagree with that. I'm vague because I didn't really know a hell of a lot about it.

HACKMAN: But you don't remember any efforts with Katzenbach or anything, that you knew of, to push harder on this?

MARSHALL: Well, vaguely, vaguely. But it's very vague.

HACKMAN: Do you remember any conversations on reapportionment in '65 when the Dirksen amendment was up? Maybe, I guess, as to whether he should get involved in this or what he could do on the issue in the Senate?

MARSHALL: Well, I think I probably thought he should, yeah. I thought it was very important and it was not much paid attention to. I thought it was a good issue for him and he had argued the Supreme Court case.

HACKMAN: Yeah. Can you remember on Gray vs. Sanders why he chose that case to argue?

MARSHALL: Well, it may have been that I suggested it to him. It's possible. He wanted to argue a case and so he sort of looked around for a case that he should argue, and I might have suggested that to him. I'm sure that I thought it was a good case for him to argue; so that may have been my suggestion, but I'm not sure. I worked with him on the argument, spent quite a bit of time with him and with Archibald Archie Cox about it, but it is not true that we wrote out the argument and then he read it, which was published at the time in some of the news stories.

HACKMAN: Was he satisfied with his performance on the case? .

MARSHALL: I think so, but he was not satisfied with the Court's performance in a way because the Court didn't challenge him on anything and he didn't like that.

HACKMAN: . Yeah.

BEGIN TAPE III SIDE I

HACKMAN: How did you then get involved with the whole screening process of the Library, out of this kind of experience?

MARSHALL: Because of that, then I sort of became an easy person for Dr. Herman Kahn who was head of the Presidential Libraries to talk to. He talked about how to implement the paragraph in the deed of gift which retained in the executors of President Kennedy's estate the right to ask that personal or private materials which they thought should be withheld from the public from a period of time; they could designate those. So, he said there should be a method for doing that.

I talked to Senator Kennedy, Bob Kennedy, about that and he agreed. I mean, I agreed with Dr. Kahn that there should be a method. So, before Senator Kennedy was killed, we'd had discussions about it. Afterwards, I just wanted to get it settled. It was one of the things that looked so uncertain to everybody that I wanted to get it settled. So I talked to Senator Edward M. Kennedy and Mrs. Jacqueline Kennedy and told her what the Archives wanted to do and then worked out an arrangement so we wrote it all out.

HACKMAN: Can you remember getting involved. . . . In late '65, Peter Edelman came up and spent some time with you talking about a civil rights speech that Robert Kennedy wanted to give. Remember anything about his thinking at that time, what he wanted?

MARSHALL: No.

HACKMAN: Anything stand out in your mind about a shift in attitude on his part on civil rights and what to focus on?

MARSHALL: Oh, I know, I see. Yes, he was doing major thinking which ended up in three speeches on the cities, not just civil rights but the urban problem, particularly the urban ghettos, and how they could be dealt with and what the role of the business corporations should be and what kind of incentives you could give to business. Yes, I do remember that. He did a great deal of work on those speeches; they were a major piece of thought, and very sophisticated, detailed thinking.

HACKMAN: Can you remember any particular events in your conversations with him, particular events that shifted his emphasis away

from the South and toward the urban problems?

MARSHALL: Well, of course, he represented the State of New York. But he had always, right from the beginning. . . . The first speech he ever gave about civil rights referred to the hypocrisy in the North, on that subject. One example he always used to use was trying to count the black faces on Fifth Avenue in New York City. Of course, the matter of discrimination in private clubs. . . . So, the process by which Negroes had been pressed out of the channels of life that the important economic, communications, and political leaders were in. . . .

It wasn't a sudden discovery; he hadn't really thought through how to do it, but even before President Kennedy was killed we had had discussions about that problem. The trouble is you're too busy, your energy is too dissipated to be effective about it. I remember we had Seymour Harris, the economist, down to Washington. He [Robert Kennedy] asked him to come talk about that and then we had some conversations with Bill Wirtz. Sooner or later, probably in the fall of '63, at least, I think the Kennedy Administration had major proposals that were similar with the Johnson proposals, the so-called War on Poverty. He [Robert Kennedy] consulted a great many people on those speeches, those three speeches that were given in early '66, a great many people that knew a good deal more than most people knew about the cities and problems.

HACKMAN: After you came up here, did you get involved in contacts with the business community on this kind of thing? Are these some of the people he talked with before putting together those speeches, or did that kind of thing only come, say, in '68?

MARSHALL: Well, I don't know everybody he talked to in '65 in preparation for those speeches. I just don't know. I mean, he wouldn't tell me everything that he was doing; he wouldn't call up and report every night. In '68, by '68, '67 I guess, when he started the Bedford-Stuyvesant project, he talked to me about that some, and Adam [Walinsky] did and Peter did and [Thomas M. C.] Tom Johnston.

I told him that I didn't have time, in my judgment, to be relied on, and that he shouldn't rely on me. We talked about that specifically and I told him it would be a great mistake if he relied on me, it took so much of my time to get anything done. I would do anything I could in terms of helping him talk to people, but if he counted on me to get something done, to put together documents, form corporations, and really get that thing going, it would never get going, and that, therefore, he should do something else. And so he accepted that, but they did talk to me about that a good deal.

John Doar talked to me a lot, too, after I left the [Justice] Department. I knew that John, some weeks before he announced, told me that he was going to leave the Department. When I found that out, I talked to Bob Kennedy, suggested he get John up there. He thought that was a good

idea, so I talked to John and made that arrangement.

Then in '68, IBM finally got around to thinking of putting a plant in a ghetto area. The recommendation in IBM came up, "Yes, we should put a plant in." We considered trying to have community ownership and do it through a contract or something. We concluded that we'd never get it done that way, that the only way to get it done rapidly was to build it ourselves and staff it ourselves and own it.

The recommendation came up to put it in Harlem. So, that came up all the way up through the corporation. I was general counsel for IBM. Mr. Watson, chairman of the board of IBM, was also on the board of the Bedford-Stuyvesant D & S Distribution and Services Corporation. Well, that's a difficult position, because if you have a whole lot of people in the corporation study a situation and say Harlem's the place to put it and then you arbitrarily say you can't put it in Harlem. . . . But the Senator talked to me, and I guess he talked to Mr. Watson about that. In any event, we got the people who were making the recommendation to change their minds. So, when the recommendation came up the second time, it was to put it in Bedford-Stuyvesant. And we did do that, but we wouldn't have done that if it hadn't been for that project and Senator Kennedy's involvement.

HACKMAN: In your conversations with him, do you think he had a realistic understanding of what could be expected from business involvement in something like this, or really business involvement in solving problems at all?

MARSHALL: I always had, and still have, great doubts, the way things are now organized, that we're going to get real help from business corporations. I expressed that to Bob Kennedy, just sort of as a matter of reality. So, maybe I would think that he was overoptimistic about that.

On the other hand, he wasn't really ever overoptimistic about the Bedford-Stuyvesant project as such. He insisted that everybody be very cautious in building up expectations. He would go way out of his way not to build them up. He knew that it would be years before he would know whether that was really useful or wasn't useful. Despite his impatience and, you know, his urge for action, he was willing to accept the fact that you wouldn't really know, that the accomplishments would be slow and difficult and uncertain for a long period of time.

HACKMAN: You didn't have the feeling though by the time of the assassination that he had lost a lot of confidence or hope that he may have originally had about the Bedford-Stuyvesant project?

MARSHALL: Well, I don't know that he had, but I think that maybe he was less convinced that he was really going to get much action out of the business people. And, of course, the business people were against him. That affected it; that affected his

own effectiveness in trying to get help. He spent an enormous amount of time putting that thing together and going to the business people that he did get involved in this.

Then when he got involved in the Presidency and became a candidate for the Presidency, I didn't have any real function in that campaign, but I did have sort of a function of trying to get business support. And, you know, you couldn't get business support really. You couldn't even get Tom Watson to sign an ad.

There was an ad published that had André Meyer's name on it. André Meyer was an old friend of President Kennedy and Ambassador Joseph P. Kennedy and the Kennedy family. He was a trustee of many of the trusts that Ambassador Kennedy had established and the one for Jacqueline Kennedy and her children. His name appeared on this ad and he was wild about it, the embarrassment to him down on Wall Street, so that it was awfully tough.

Of all the businessmen I produced, Roswell Gilpatric was about the sum total. I think that that reaction to him in the business community, as well as the experience with Bedford-Stuyvesant, turned him off, maybe, on the notion that they would really deal with those problems.

HACKMAN: I know he had series of meetings with business leaders in New York and then one-to-one relationships maybe on Bedford-Stuyvesant. Did you see him frequently in that kind of situation?

MARSHALL: Not frequently.

HACKMAN: What kinds of problems did he have in getting along with these people just in talking to them?

MARSHALL: Well, I don't think he had much, individually, really. I think the people he dealt with individually ended up liking him. The person that I've talked to on that is Benno Schmidt.

One project that I had during the campaign, that never was fulfilled, was to get an article published that dealt with the story about FBI agents in the middle of the night, which is what businessmen always referred to, at the time of the steel crisis of 1962. So, I got a reporter that I knew for the Wall Street Journal to try to deal with that. He interviewed some businessmen. He dealt first with the steel crisis directly because I had arranged so that he could talk to people that knew about it; you know, McNamara was one of the other people that really knew about it. But secondly, I also suggested some businessmen. One of the ones that this reporter talked to was Benno Schmidt.

Benno Schmidt's a Republican, and he'd never known Robert Kennedy before. So, he Robert Kennedy came in sort of cold to ask him to be on the board of the Bedford-Stuyvesant D & S Corporation. Well, they had great communication, and Benno Schmidt was really sold on the project, sold on the man. I think that was true of the other businessmen that were involved.

He never was comfortable talking in groups. I attended a lunch, a very small lunch that Tom Watson put together for Senator Kennedy to meet a number of businessmen. It didn't go well because they just sat there like lumps. I don't know what they thought, but it was very difficult. There was this very strong uninformed reaction against Kennedy among the businessmen there. It was really so strong that it was sort of a mass reaction so that any one of them was embarrassed to break out of the mold and say, "Oh, I think there's something to Senator Kennedy."

HACKMAN: Were you involved in '68 in fundraising from these kinds of people? Would you find that these kinds of people would give funds but wouldn't allow their names to be used?

MARSHALL: I was not directly, but I saw something of the fundraising because of Steve Smith. I was with Steve Smith when he talked about money to some businessmen. Some businessmen did give substantial money but wouldn't let their name be used.

HACKMAN: Did you get involved in discussing any New York Federal judgeship appointments while Robert Kennedy was Senator?

MARSHALL: Yes.

HACKMAN: Can you remember any of those?

MARSHALL: Well, I remember Constance Connie Motley, but there were others. I know, Marvin Frankel. I mean I was one of the people that sort of did a check on them. Wilfred Feinberg, he talked to me about Feinberg. Jack Weinstein he knew personally very well. Walter R. Mansfield. I think he asked me to sort of check around on all of these people. I called lawyers I knew down on Wall Street and then reported back.

HACKMAN: Can you remember him being particularly frustrated with the Johnson Administration's attitude toward judgeships from New York?

MARSHALL: Well, they were tough to deal with on any appointments from New York, not just judgeships. The Post Office Department; there were many appointments that the Johnson Administration was very uncooperative about.

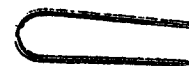
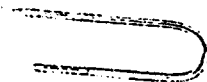
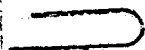
HACKMAN: Are any of these judgeship people that he really recommends, or are they people that are presented to him and then he tries to decide?

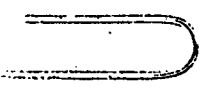
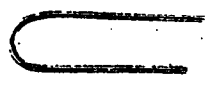
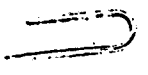
MARSHALL: No, no. No, no. He really recommended Feinberg; he really recommended Constance, Connie, Motley and Jack Weinstein, Mansfield. I don't remember about 1967. The Johnson

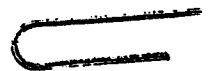
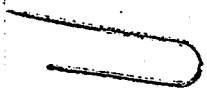
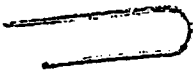
Administration was tough to deal with. They were uncooperative and tough and unpleasant with him on appointments.

HACKMAN: Do you remember getting involved in a discussion of the Francis X. Morrissey appointment, the Francis X. Morrissey thing?

MARSHALL: I just don't remember. I know that, you know, that was something that Ambassador Kennedy asked for and that it was a great source of problems for Robert Kennedy, John Kennedy, Edward Kennedy, but I don't remember discussing the particular thing.







HACKMAN: Did he ever talk about the Earl Warren Commission with you?

MARSHALL: He accepted the conclusion of the Warren Commission, completely.

HACKMAN: He never asked you, for instance, to read any of the books that were coming out on the assassination for him or follow the James Garrison trial or any of this?

MARSHALL: Not in terms that suggested that he thought there was anything real in any of those things. You know, there were efforts. I mean, Garrison tried to subpoena the x-rays. On matters like that he wouldn't talk to me, he would assume that I would deal with them, and I did.

HACKMAN: Can you remember when the FBI's report came out on the assassination, I guess in early '64, what was particularly upsetting about that?

MARSHALL: The FBI report?

HACKMAN: Didn't the FBI issue their own report on the assassination in 1964? You don't recall that, being a matter of, not concern really, but something that upset him?

MARSHALL: I don't remember their issuing a report. They don't usually do that. You mean a public report?

HACKMAN: I don't know if it was public, or whether it just went to. . . . No, it was made public because . . .

MARSHALL: Well, that was a defense of their own actions, probably.

HACKMAN: It was Chief Justice Warren and it was Katzenbach who felt that they had an agreement that it wouldn't be made public. Somehow it was.

MARSHALL: I don't remember.

HACKMAN: You don't, no.

MARSHALL: The manner in which Hoover informed Robert Kennedy of his brother's death was brutal, and he was upset by that.

HACKMAN: That general point is made in those other interviews, but there's no description of what really took place. Do you remember that, or is it worth it?

MARSHALL: Oh, it's not worth it.

HACKMAN: How would he talk to you about Vietnam during '64-68? How would you get involved in something like that, let's say, if he's considering a major speech or just interpreting events or whatever?

MARSHALL: Well, just because I'd see him from time to time and the stuff came up and I'd hear him. I remember we had a conversation, 1965, shortly after the United States turned that into an American war, in which we sort of agreed that that action was going to tear the country apart within the next two or three years. So, that's the way he felt about it right from the moment it was done, sort of in early '65, whenever it was that the troops were sent in there in large numbers.

HACKMAN: Can you remember discussing in that period whether he should speak out at that point and his relationship with the Johnson Administration being a factor then and later?

MARSHALL: Well, I remember discussions. I can't put them in the proper time sequence, but he was always concerned about something that he said about the war. He was concerned about his public responsibility, not only in the United States but in the world, in having a public disagreement with his country on a matter of that sort, especially under circumstances where it would be widely construed to be a personal vendetta rather than a substantive disagreement. There was always that factor. In fact, the only time that I think he felt free from that at all was when he decided in early '68 that he was not going to run for the Presidency. He sort of told everyone that and then he made a speech right after the Tet offensive . . .

HACKMAN: In Chicago.

MARSHALL: . . . in Chicago which was a very good speech. He made a speech in the Senate on the Senate floor that I heard. No, that was before that. But I think he was freer with that speech than in any other speech on Vietnam, in terms of having it construed as being a political gesture rather than a statement on the merits. If you look back, I think you'll find that every other speech he made about Vietnam was interpreted by a number of people, and clearly, I'm sure, by the White House, not for what it said but as being a political gesture, a cynical political gesture, a break with him.

HACKMAN: Did he ever talk about events during the Kennedy Administration in relation to Vietnam and his own role and what he thought, if anything . . .

MARSHALL: I don't remember.

HACKMAN: . . . had been done incorrectly or not? Can you remember getting involved in a discussion as to whether he should take a trip to Vietnam?

MARSHALL: Yes, I was going to go with him.

HACKMAN: In late '65?

MARSHALL: I think so. And the reason we didn't go was that the President heard about it and went to Hawaii or someplace out there and met with General Nguyen Cao Ky. We were going to go. He talked to McNamara about it, and McNamara had said he should go to see the pacification program as we called it, a terrible misnomer. But he was going and I was going with him.

HACKMAN: Are there other times later that he considered going that you know of?

MARSHALL: Well, he always wanted to go, but he was always in a position where if he went it would be just the same thing that we've just been talking about. Then after a while it became too late to go and the people said, "Well, he doesn't know anything about the war, he hasn't gone there." But he did consider going a number of times, I can't remember when.

HACKMAN: Can you remember specific things on the domestic front that really turned him around, not turned him around, but really led him to seriously doubt the Johnson Administration, President Johnson's ability or intentions to deal with the domestic problems, particularly civil rights and urban problems?

MARSHALL: I suppose that the handling of the riots it--when?--1966, '67?

HACKMAN: Detroit is '67.

MARSHALL: Chicago?

HACKMAN: I don't know if that's the same summer or not.

MARSHALL: New York?

HACKMAN: New York, I think that's all '67.

MARSHALL: Or whatever summer that was. What information you could get from the way they were dealing with that did not show. . . .

I mean, how can you judge something when you're outside of it? All of the indications that you get from people inside, John Doar and other people, was a hardening, dealing with it as a military problem. President Johnson dealt with things as military problems often.

Senator Kennedy was much closer to the people in the city, the blacks particularly, than almost any white man I can think of. He knew more about them and understood how they felt and reacted better. There may have been other things, but that's what I think. I think he made a speech at some point that indicated that about their handling of the riots.

HACKMAN: Did you have contacts on his behalf with any black leaders during '66 and '67, or would he ever ask you to talk to people?

MARSHALL: Not that I remember. He may have, but not that I remember. In '68, he did.

HACKMAN: When can you recall first discussing with him the possibility of making a race in '68?

MARSHALL: The end of '67. I can't put a date on it closer than that, but before the close of the year.

HACKMAN: Do you remember what in his own mind really brought him to that, in talking to him, any particular public opinion polls, the Detroit riots, the riot thing, or other specific things that stick out?

MARSHALL: Well, of course, the war was the controlling thing. The reason he finally decided was because of changes in the war, not other changes, the Tet offensive particularly, and that was it. It was because of the war. I don't think it was. . . . It was much more. He wouldn't have ever dreamed of doing that because of dissatisfaction with the handling of the riots or something.

I think the first time I really talked to him about it at all. . . . Adam Walinsky or other people would call me up and ask me to. You know, they wanted him to run. I didn't want to interfere with that and I didn't know anything about it, but then, I can't remember why, he asked me, or I must have called. But, in any event, he was up in New York in December or late November. It was on his mind and I went over to his apartment. The only person there was James Jimmy Wechsler, so there was Jimmy Wechsler, and Jimmy Wechsler was telling him he should run for the Presidency. He said to me, "What do you think?" Of course, I didn't know it was on his mind; I mean, I didn't know what his train of thinking was or anything. There was Jimmy Wechsler, you know, so I thought, "Well, that will all go into the paper." So, I gave him all the reasons why he shouldn't do it, thinking that that won't put him on the spot. Then Wechsler can say, "Some people are urging him," but he's not going to say, "Marshall's urging him." And Wechsler did report it that way. Then after Wechsler had left, I told him I wasn't really opposed to it at all, that I felt precisely the opposite.

Then there was a meeting down at Hickory Hill where he had Jesse Unruh and some other people from California who came in to urge him to enter the primary. That was sort of a decision date for the California primary. He asked me to come to that, and then he asked Sorensen and Kenny O'Donnell. I went down on the airplane with him, that's right. Ethel Kennedy met us and we drove past the President's grave on the way in to Hickory Hill. So, I told him then.

But, of course, I could tell him that and I told him that, but I told him that I didn't really know anything about it and that I thought that there must be someone around that had some ability to judge whether it was possible. I didn't think he ought to run just to make people happy. There wasn't anyone around that could make that judgment; no one was capable of making that judgment.

HACKMAN: Did he discuss with you polls that he'd taken?

MARSHALL: Well, I can't remember. I think he may have. But the fact is, the polls didn't make any difference. What made the difference was the Democratic National Convention. You can't measure the Convention by the polls. You may measure the New Hampshire primary or something like that by the polls, but you can't. . . .

HACKMAN: When he was talking to you like in December in a conversation, would he talk about specific primaries at all, for instance, whether to go into New Hampshire or not?

MARSHALL: No, because he wasn't trying to. . . . I mean, those were tactics, not a decision. The time to decide that was when you'd decided you were going to do it. He hadn't decided he was going to do it.

HACKMAN: Can you remember the meeting with Jesse Unruh, at which

O'Donnell and Sorensen and, I believe, Fred Dutton also were there? Can you remember what position people had, what they were recommending to him?

MARSHALL: Well, Ted Sorensen was very much opposed to it and he was right up until the hour of announcement. Ken O'Donnell, I think, sort of felt like I did, that he really wanted him to do it, but he couldn't rationalize it. Ethel really wanted him to do it I think, mainly because she--and this was really a good deal of my feeling, that he would never forgive himself for not doing it. And if the feeling's that, then he ought to go ahead and do it. Well, Fred. . . . Well, I'm not going to be able to remember.

The California contingent were very strongly urging him. That was their purpose in being there.

HACKMAN: Did he ever talk about the urgings of Peter and Adam Walinsky and people like this, and discourage that?

MARSHALL: Well, he didn't like it much. He listened to it, but I don't know what he did about it.

HACKMAN: Would he talk to you about his staff in general? Did you have the feeling that he had many dissatisfactions with his staff through that whole Senate period?

MARSHALL: No, he did not have much dissatisfaction with his staff. He had irritations sometimes on particular issues when they were pressing very hard to do something he didn't want to do, but they were a good staff. I mean, he thought they were a good staff.

HACKMAN: Could you see that they had much impact on his thinking, because Edelman and Walinsky are the two that people talk about most?

MARSHALL: Well, they certainly had some impact on what he did, but his basic interest preceded their ever being around. I don't think they had. . . . Well, I would have to say I don't think they had much real impact except in detail. I told you of a very early conversation about Vietnam. I don't think he ever changed his view on that. So, he knew about that, and the cities, and the blacks. All of those instincts and interests were already there; they weren't put there by Peter or Adam. In fact, he hired Peter and Adam because they were there, rather than the other way around.

HACKMAN: Can you recall discussions in late '67 as to whether he should take a trip to Europe or not, Eastern Europe?

MARSHALL: Yes.

HACKMAN: Why was he considering doing that, do you remember?

MARSHALL: Well, he wanted to take a trip somewhere and that it was there.

was the reason more than any other reason.

HACKMAN: Yeah.

MARSHALL: I remember he did ask my view of that, but I can't remember quite what the considerations were, if they were the same kinds of considerations that the White House would look on it as a political thing.

HACKMAN: You don't remember him having very much in mind, just the idea of getting away from the pressures here by taking a trip at that point?

MARSHALL: I really think that he wanted to take a trip. The question was, "Where?" and if you rule out Vietnam, you've been to Africa, Western Europe wasn't much of a trip, you couldn't get into China, and you'd been to Japan; so it was there, available. I really think that was it more than anything else. Now, I'm sure that Lyndon Johnson thinks he went there in order to sew up the Polish vote or something, but I don't think that was in his mind.

HACKMAN: Do you remember talking to him at all about Robert McNamara's resignation? Did that have any impact on the decision?

MARSHALL: What decision?

HACKMAN: The decision to run at all?

MARSHALL: I did talk to him about the resignation. When was his resignation?

HACKMAN: I guess it became known sometime in January of '68. Then he left at the end of February.

MARSHALL: Well, I don't think that it had an important. . . . I don't have an impression that it had any important impact on his decision to run. He thought that McNamara was very badly treated by President Johnson. I suppose it was easier for him to run with McNamara out of the Administration, in a personal sense. But he'd lived with that, you know, not only McNamara, General Maxwell D. Taylor . . .

BEGIN TAPE III SIDE II

HACKMAN: Can you remember getting involved in any discussions with him of whether Johnson would run in '68, whether he might withdraw if Robert Kennedy challenged him?

MARSHALL: He didn't think he'd withdraw. I didn't either. The only

person who thought he would withdraw that I know is Dick Goodwin.

HACKMAN: Based on what judgment or what experience?

MARSHALL: I don't know, I don't remember. You'll have to ask Dick Goodwin.

HACKMAN: Can you remember talking to him about how he thought McCarthy would do in New Hampshire?

MARSHALL: The Senator?

HACKMAN: Right.

MARSHALL: I think he thought he'd do well.

HACKMAN: Did he ever discuss what kind of agreement, if any, he thought he had with McCarthy about what would happen if McCarthy won and Robert Kennedy . . .

MARSHALL: He had no agreement.

HACKMAN: He never said he did?

MARSHALL: No.

HACKMAN: You'd said earlier that at one point in early '68 he definitely decided not to run. Can you remember at what point that was, what finally brought him to that decision, and then what turns it around?

MARSHALL: Well, it was after the meeting with Jesse Unruh. Why he came to that conclusion, I can't tell you. He never described his reason to me.

HACKMAN: You mean he decided to run after he talked to Unruh?

MARSHALL: No, no. He decided not to.

HACKMAN: That late? So, I think that meeting is March 3rd. Does that sound too late to you?

MARSHALL: I would have thought that was too late.

HACKMAN: Let me try to pinpoint it this way then. You said you flew back down with him on the plane to Washington. Was that following a State Democratic Committee dinner up here that, you remember, Unruh attended and maybe Robert Kennedy was up for?

MARSHALL: Well, he was up for some reason because I flew down with him.

HACKMAN: Do you remember Unruh being on that plane?

MARSHALL: Unruh was not on that plane. There was some reporter on the plane because I sat next to him. We sat three abreast. I can't remember who the reporter was, but all the way down he was being interviewed by this reporter, not about the Presidency but for some magazine piece or something.

HACKMAN: Nothing else that you can tie it to timewise that sticks out?

MARSHALL: Well, I thought it was in January, frankly.

HACKMAN: That makes more sense.

MARSHALL: And then there was the campaign that was going on in New Hampshire. He hadn't made up his mind about it. I can't get you dates, but that's an established. . . . He talked to some reporters. He had them in to breakfast or something and he told them that he'd been through this and that he clearly wasn't going to run. That was in the papers.

HACKMAN: That statement is January 31st, "No foreseeable. . . ."

MARSHALL: The meeting that I'm talking about with Unruh was before that.

HACKMAN: Okay. We can find that out.

MARSHALL: I don't think Unruh would have accepted that as a final conclusion, maybe, and so I'm sure he saw Unruh after that, but I'm talking about a January meeting.

HACKMAN: In your mind, what's the major factor that turned him around again? Is it the Tet offensive and the request for troops?

MARSHALL: Yes.

HACKMAN: Speaking of that February 8th speech in Chicago, can you remember conversations with him about what to say and how to interpret the Tet offensive?

MARSHALL: No, I had nothing to do with that speech. I thought it was a great speech, but I had nothing to do with it.

Now, at one point, I went down there to see him and I had lunch with him and Walter Cronkite. After that lunch, he made a speech on Vietnam. Can you identify when that is? Cronkite had just come back from Vietnam. Cronkite urged him to run at that lunch.

HACKMAN: I think that's the March 3rd or 4th speech.

MARSHALL: March 3rd or 4th. Well, he must have had his mind reopened by that time. The Tet offensive was in February?

HACKMAN: The Tet offensive, yeah, began early January 31st and was over the next couple of days. Cronkite was urging him to run?

MARSHALL: Yeah. The reason for the lunch was that he wanted to see if Cronkite was interested in running in New York.

HACKMAN: Can you remember other discussions, other people considered in New York? Was he very interested in that? Did he think anyone could beat Javits?

MARSHALL: I once went with him, I just happened to be there. It sounds as if I was around all the time, which is not true. I was once with him, by chance, when he went and talked to Arthur Goldberg about that also. Arthur was the Ambassador. He talked to me just because I was around sometimes, about who did I think could run. I couldn't even think of anybody, and there was obviously nobody.

HACKMAN: Was he definitely interested in having Goldberg run?

MARSHALL: Well, he wanted a strong candidate. He was interested in building up the Democratic party in New York and, having a weak candidate for the Senate, that's what he was interested in.

HACKMAN: Can you remember other points after you came to New York when you talked to him about candidates, either the [Samuel J.] Silverman thing or [Frank D.] O'Connor in '66?

MARSHALL: Well, I had a conversation with him about the Silverman thing and also with Steve Smith, who called me at his request. But those were these conversations that I would classify as conversations where they thought I knew what they were talking about and I didn't really know what they were talking about. So, I don't think it was much help. I did do something with the Silverman campaign. Again, I went out on the streets with him, during that, and I talked to some Negro. . . . You asked me about that and I did at that time. [James H.] Meredith. I don't know why we thought Meredith was much of a plus, but it was hard to get Negro support for Silverman. I talked to some others, Arthur Logan.

HACKMAN: [J. Raymond] Ray Jones? Is that someone you can talk to?

MARSHALL: Well, not about that. I'd talked to Ray Jones in the past, but you couldn't talk to him on that because he thought, and with some reasons, that Silverman was just an attack on him;

at least Ray Jones thought it was.

HACKMAN: When do you know for the first time that Robert Kennedy is really going to run in '68?

MARSHALL: Well, I didn't know until the night at Steve Smith's apartment.

HACKMAN: What was the intended reason for that meeting?

MARSHALL: Well, that was the reason. I mean, the reason was to talk about whether he should or not. But the fact is that by the time he got there, he really had decided already, I think. He would have undecided himself if it was. . . . But I must say I always thought it was just absolute nonsense about a commission, an independent commission on Vietnam. I mean if the President had done something about that, that would have undecided him again, although, I think he never expected the President to do anything about it. He did it because Daley suggested it, and I guess it was worth it from that point of view.

HACKMAN: In talking about the Vietnam commission, did he feel that it was workable if the President would have accepted it?

MARSHALL: Well, he knew how I felt about it, so he didn't talk to me awfully much about it. I thought it was a foolish idea.

HACKMAN: Anyone other than Sorensen who was in favor of it that you can remember that it was discussed with?

MARSHALL: Well, he didn't discuss it with very many people. He discussed it with Steve and with his brother. I don't know what they thought about it. His brother didn't really want him to run, so he may have been in favor of it.

It was Sorensen's idea in a way, but it came through Daley. I mean, if it hadn't come through Daley, I don't think he would have taken it seriously. But Sorensen didn't want him to run either, of course.

HACKMAN: What else took place that evening at Steve Smith's? Any phone calls? What kind of discussion did you really get involved in?

MARSHALL: Well, it started off as a discussion, "Should he run or not?" We were all busily advising each other about that and then we looked at the 7 o'clock news and there he was saying that he was reconsidering his position. But in the context, saying he was reconsidering his position was awfully close to saying he was going to run. So, that sort of changed the discussions to tactical ones about the primary. Then when he got there this business came up about the commission, and he went around telephoning I don't know who.

HACKMAN: Did he ever say that the interview with Cronkite was done to take the limelight away from McCarthy quickly?

MARSHALL: I'm sure it wasn't.

HACKMAN: It wasn't.

MARSHALL: It was something that he'd agreed to do. In interviews like that he was always very honest and always got himself into trouble that way. I'm sure that he told Cronkite that he was reconsidering his position because that was the fact. His reconsideration really had nothing to do with the primary, really nothing. If that interview had been three days before the primary, then a lot of that fuss might have been eliminated.

HACKMAN: If the Tet offensive is the thing that basically had an impact on him, why is it only by mid-March that he's reconsidering? What has to take place in that period?

MARSHALL: You mean before he said that he was reconsidering?

HACKMAN: Yeah. Your impression is that he's seriously reconsidering, through all really . . .

MARSHALL: Well, I told you about this lunch with Cronkite. You said that was . . .

HACKMAN: March 3rd.

MARSHALL: March 3rd, so I know that by that time he was in fact. . . . Well, just from observation, I know that. In fact, I sat in the galleries with Ethel Kennedy, in the Senate gallery when he gave that speech on Vietnam. She talked to me and she said, "What do you think he'll decide to do?"

HACKMAN: Can you remember the discussion of what primaries to get into that night and what his . . .

MARSHALL: Oh, I didn't know anything about it. I mean, I knew that the California primary was important just because I knew. But I didn't even know there was a primary in Indiana. You know, I just absolutely didn't know about them. I suppose that it was clear that he really had to enter every primary that he could get into.

HACKMAN: Did he talk to you at all about what role you might play in the campaign? Did he ever ask you to work full-time?

MARSHALL: I talked to him about that sometime in his house. You see,

after that meeting in Steve Smith's apartment, then this business with the commission blew up in short order, as it deserved to. Then I had to go out to Chicago, and he went and made his announcement. I couldn't be at his announcement because there was an American Assembly meeting in Chicago, although I talked to him the night before while he was writing it. At his request I called Martin King the night before. Then he went running off making speeches, and so I didn't see him for a while after that. He just wasn't around. I may have talked to him on the telephone, but I didn't basically see him. I think I talked to him. He made a very successful speech out somewhere in the Midwest, at a college. First speech he made out there.

HACKMAN: University of Kansas and Kansas State University.

MARSHALL: Well, I talked to him after that speech, I remember, on the telephone, but I didn't see him for a while. The first time I saw him, I talked to him about that, although I'm no use in campaigns, really. I told him that that's what I wanted, but he didn't want me to do that. He said, "Well, wait until after the . . . " whatever was the next primary. I can't remember what it was. Indiana?

HACKMAN: Yeah, and then Nebraska.

MARSHALL: "Wait until some of the primaries are over." I don't know whether he really didn't want me to or whether he just didn't want me to sort of quit and drop everything and do that and then have him get beaten in the first primary. I think it was more of that. But in any event, that was his reaction.

So then he said, "Work with business people," and I did do that. I got some economists, Paul Samuelson, James Jim Tobin and some of those advisors, and with the people in Washington that were substantive issue people, with Lou Oberdorfer and the Citizens group. But I wasn't much use.

HACKMAN: Can you remember other times through the campaign then, let's say before the King assassination, when you talked to Robert Kennedy on the phone, his impressions of how things were going?

MARSHALL: Well, he did pretty well in the primaries until Oregon. I didn't see him after Oregon, until the end of the California primary. But he was never discouraged as I mentioned he once was when he was running for the Senate, because he'd made his decision, then he was involved in it, and he was doing well.

HACKMAN: You don't remember talking to him at the time that Johnson withdrew, his initial reaction?

MARSHALL: I did not talk to him about it.

HACKMAN: What about when Dr. King was assassinated? What can you

remember about your first conversations with him, what he should do and what he should say?

MARSHALL: He called and said he was renting this plane. Now maybe he asked me whether he should rent it, I can't remember. But in any event, he rented the plane and he asked me to go down there and get on the plane, and so I did that. I got to Memphis and got on the plane and rode back with Mrs. King and Dr. King's body. Then I went to the funeral with him.

HACKMAN: Do you remember discussing with him, for instance, whether he should go on nationwide TV and make a speech at that time?

MARSHALL: I guess it was then. Yes, I do remember that.

HACKMAN: Do you remember what you advised or why he didn't do that?

MARSHALL: Well, I suppose he really didn't know what he wanted to say, in a way. I can't remember why the subject came up. I guess somebody was urging him to do it. Fred Dutton or someone? I can't remember who it was. Oh, I know, Allard K. Al Lowenstein, I think. Well, I was out at his house once with Al Lowenstein, the Al Lowensteins. In any event, I do remember that coming up, but I can't remember the considerations involved.

HACKMAN: You mean you were out there with Al Lowenstein around the time of the assassination?

MARSHALL: Yes.

HACKMAN: What did he think of Lowenstein going back to his earlier relationship with him?

MARSHALL: Well, I think he liked him. I never asked him that question, but I think he liked him.

HACKMAN: What can you remember about the meeting, then, at the time of the funeral in Atlanta with the black leaders? How was that set up, and why really?

MARSHALL: I suppose that I shouldn't have let him do that. It was set up because there was an opportunity, which he probably wouldn't have again until at least the end of the primaries, of having all in one place at one time every black leader in the United States, really not every one, but almost all. So, it made some sense, sort of physically, to meet with them. Somebody urged that, I can't remember who. I agreed to it. I suppose I consulted with him. In any event, I agreed to it. I must have consulted with him. He must have agreed to it, too.

Every time we talked about meetings of that sort we remembered the meeting, which we also both agreed to, with James Jimmy Baldwin. In order to see to it that the groups were not groups that would end up with that kind of a discussion, he asked John Seigenthaler to go up there and supervise who he would meet with. So John did do that, but he had trouble with it because Earl Graves was roaming around inviting people.

I don't think that the meetings were very successful or useful as they turned out. On the other hand, I don't think that they did much harm. I don't really know how he could have been in Atlanta all that time and not have had some meeting with them. If you have some meeting with some of them, you'd have a hard time not having a meeting with all of them.

HACKMAN: Can you remember discussing whether in the '68 campaign to try to get public endorsements of major black leaders?

MARSHALL: The political considerations were that no one else was going to get the support of the blacks and that the endorsements therefore were not as meaningful with him as they would have been to Gene McCarthy or Hubert Humphrey or somebody else. So, that was the reality of it. I didn't do an awful lot of this, but I did some talking to Mayor Richard G. Hatcher and to Carl Stokes. There were many Negro leaders who wanted to endorse Senator Kennedy, but they wanted an accomplishment to go with the endorsement, so they kept wanting to set up a meeting.

My role in that was really to avoid having a meeting, so that's what I'd do. I'd put it off and put it off, because there was no point in his having a meeting. Those were very good people, I mean particularly Hatcher was an exceptional fellow, and Charles Evers and other people were very, very friendly, but to have a group meeting with them and then have them come out in a mass and say, "We are endorsing Senator Kennedy because he agreed to X," was not a political plus in any of those primaries. So, there wasn't any reason.

HACKMAN: What about considering having Dr. King, or attempting to have Dr. King endorse him?

MARSHALL: Well, as I said, I called Dr. King the night before Senator Kennedy announced. Dr. King was in California and he was about to speak to the--what is it?--CDC California Democratic Council the California . . .

HACKMAN: Democratic Council.

MARSHALL: . . . Democratic Council. The information was that he was going to endorse Senator McCarthy because of the Vietnam issue. So, I called Dr. King and told him that Senator Kennedy was going to announce. I didn't ask him to endorse Senator Kennedy, but I asked him not to endorse Senator McCarthy. He said that

he agreed with that, he was glad Senator Kennedy was entering the race, and that he would handle that in his speech in that way. And he did, although Senator McCarthy subsequently took a piece of that and used as if it were an endorsement.

HACKMAN: Any later contacts with Dr. King then, before the assassination?

MARSHALL: Yes. I can't remember, but I know I did. I mean, I followed that up with Dr. King and with Ralph Abernathy and Andrew Andy Young.

HACKMAN: Would he have agreed at some later point to endorse Robert Kennedy?

MARSHALL: I think he would have, I think he would have. I think he would have certainly before the Convention. In fact, he told me that once. He said that, as he saw it, he thought Senator McCarthy had shown political courage and done a service in entering the race, but he saw there was no chance of the nomination going to Senator McCarthy and that therefore at some point he would say that and urge everyone that followed him to support Senator Kennedy.

HACKMAN: Did you ever hear Robert Kennedy comment on Dr. King's involvement in the anti-war movement? Did he have a viewpoint as to whether he should have done that along with the civil rights focus or not?

MARSHALL: I can't remember. I have an impression that he thought it was a mistake at one point, but that's just an impression. I can't put a time on it.

HACKMAN: Can you remember talking to him about Resurrection City during the '68 campaign, and what, if anything, he should say about it or what he thought about it really?

MARSHALL: Well, I suppose he did. You mean talking with the Senator, not Dr. King?

HACKMAN: Yeah, talking to the Senator.

MARSHALL: Yeah, I think that maybe that came up more in terms of what Mrs. Kennedy should do; Ethel Kennedy. Ethel Kennedy did something about Resurrection City?

HACKMAN: I don't know. I don't remember that if she did.

MARSHALL: Well, that's the only specific example that I can think of. The problem was the same problem. Resurrection City wasn't

a great political advantage. It wasn't much of a political advantage to be for it, and it wasn't much of a political advantage for them to be for you, or at least for Senator Kennedy.

HACKMAN: Yeah. Did you get involved in any discussions of what, if anything, to try to do in the South in terms of challenge delegations or . . .

MARSHALL: No, I think Ethel Kennedy went on a march, a woman's march with Mrs. King after Dr. King was killed, sometime in the spring. That was the only specific thing, the question whether she should do that. Well, she just wanted to do it. The people down at the Kennedy Headquarters didn't want her to do it, so she talked to me about that. That's the only specific thing.

HACKMAN: Okay. Then my other question was, did you get involved in any discussions about what to do about the South, whether to try to make any major efforts, politically, down South in '68?

MARSHALL: I don't remember. I may have talked to him, but I don't remember talking to him about that. He had Robert G. Bobby Troutman and John Seigenthaler going around rounding up their three delegates or whatever they could find. Charles Evers. I think we could have gotten some delegates from Mississippi.

HACKMAN: Do you remember talking to him at the time when Drew A. Pearson's columns were coming out on King and the wiretap again in '68 and what had to be decided?

MARSHALL: Well, he had to know how to deal with it. Pierre E. Salinger called me and various people called me and asked me about it. He wasn't going to lie about it. It didn't seem to be very desirable at that time in the middle of the California primary to try to explain the whole business about wiretaps and the Bureau. I mean it's not an explicable thing in the middle of a political campaign. So, with those two things out, how would you handle it? He talked to me also about that when I was out there before the debate with McCarthy, because he knew it would turn up in the debate. And he handled it in a way that could do either of those two things, really, by refusing to discuss it.

HACKMAN: When and why specifically did you go to California?

MARSHALL: He asked me to come out there, I think because of the debate.

HACKMAN: Were there other things you got involved in while you were in California, other than the preparation for the debate?

MARSHALL: Well, there was the use of this excerpt from Dr. King's speech

by McCarthy. I can't remember what the excerpt was, but they excerpted the speech on a record in such a way as to make it sound like Dr. King had endorsed McCarthy. Then they were distributing this record to households and playing it over some stations.

I knew that wasn't true. You know, he wasn't going to lose the black vote anyway, but we had to do something about it. So, that was there. I had a job and that was my job. I talked to Mrs. King and I got Mrs. King to make a statement that her husband had not endorsed Senator McCarthy. She would have endorsed Robert Kennedy if there hadn't been that situation of being on the eve. . . . Then I issued a statement and called up the radio stations, the black radio stations. I don't think it changed two votes one way or the other.

HACKMAN: At the time you came out, he had clearly decided to debate McCarthy in California, though? Did you talk to him about that earlier?

✓ MARSHALL: Well, I don't remember talking to him about debates at all. I probably talked to other people. I think that the people who were urging him to debate in Oregon may have talked to me, because I remember somebody bringing up that issue, but I didn't want to get in the middle of it, you know. I wasn't there, and I didn't know anything about it. I'm sure right after the Oregon results, he decided he was going to debate McCarthy.

HACKMAN: Can you remember in the discussions before the debate anything that he was particularly worried about in terms of debating with McCarthy?

MARSHALL: The most difficult thing to handle really is the question about the wiretap, to handle it shortly and quickly and get it over with.

HACKMAN: Yeah. Did you talk to him at all about plans for after California?

MARSHALL: Well, I had to go back. I didn't want to be in the way. I thought I was in the way. I mean you get to be in the way, particularly if you're a fairly close friend, if you stay around and you don't have anything to do. I really had things to do back here, so I left Sunday night, or Monday I guess, before the primary, the night before the primary, and came back here.

Then I got a call on Tuesday, not from him but from Steve I think, or somebody, asking me to come back out there on Thursday or Friday or something--they knew they were going to win that primary--to discuss, "What next?" They were going to have a meeting somewhere in Southern California, so I was going back out to discuss that. But I never did discuss it with him. Maybe I would have been of some use after the primary.

HACKMAN: That's really all I have on the campaign. Anything else that you recall?

MARSHALL: No.

HACKMAN: Any discussions about how to handle law and order as an issue in '68, particularly in Indiana?

MARSHALL: No, I signed some ad for it. He wasn't going to be against law and order.

HACKMAN: Did the John Kennedy assassination change him permanently? I know it's a very general question, but from what you knew of him, '64 to '68, in what ways was he different than he had been when the President was alive? Or is there anything you can put your finger on?

MARSHALL: Well, I'm not sure that I would say that he was different. I mean he was basically the same person. That was a shattering experience for him, and he was certainly different for a while, but. . . .

HACKMAN: In '64, how long was it before he really began to focus on Justice Department things again? You had said he wasn't back much in December and January, but how long really does that go on?

MARSHALL: Well, I suppose that he never fully got back in the Justice Department, but he went down to the Senate some, you know, on the civil rights bill later when that was such a matter of constant discussion in the Senate. Was it March, April sometime?

HACKMAN: Yeah, yeah.

MARSHALL: I would have to say that I don't think he ever really recovered his interest in the Justice Department.

HACKMAN: In looking at President Johnson, how did he understand or interpret President Johnson's personality?

MARSHALL: I don't know what that means.

HACKMAN: I can't remember where I read it, but--it's not in an interview--someone said that he had serious doubts about President Johnson's stability, psychological make-up or something. I guess I don't really know what I'm asking. I'm just asking for a. . . .

MARSHALL: I know what you're asking. I don't think there's any way of answering it. He thought that President Johnson was very good

at using people. I think that he worried. He really thought that it was a weakness and not a strength to use force, if I can put it that way, and that Johnson's belief in the use of force was a fundamental weakness and a fundamental deficiency in the President. I think that's what you have in mind. Now, you can describe that in personality terms, but I don't think that's useful. I think in terms of his concept of what is a good President, that was the fatal flaw in his mind.

HACKMAN: When the two of you were together in conversation, would you almost always focus on, let's say, past experiences that the two of you had together, or current problems, or what other things did he like to talk about to you? Did he ever just talk religion or anything like that?

MARSHALL: No, not appreciably. I can't remember.

HACKMAN: Are there parts of him that you found very difficult to understand?

MARSHALL: Well, he was a complicated person, but I wouldn't say so. No, I really don't. I understood and liked him very much, but he was a complicated person.

HACKMAN: That's all I've got.