

Burke Marshall Oral History Interview – JFK#2, 5/29/1964
Administrative Information

Creator: Burke Marshall
Interviewer: Louis F. Oberdorfer
Date of Interview: May 29, 1964
Place of Interview: Washington D.C.
Length: 8 pages

Biographical Note

Marshall served as Assistant Attorney General in the Civil Rights Division of the Department of Justice (1961-1964); general counsel of International Business Machines Corp. (1965-1969); and as an adviser to Robert F. Kennedy. In this interview, he discusses violence in the Freedom Rides during the summer of 1961, including negotiations with the governors and public safety officials of Alabama and Mississippi to ensure the safety of the riders; arrests of the riders; and the eventual desegregation of bus facilities, among other issues.

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By Burke Marshall


to the

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1. The following portions of the interviews conducted on May 29, 1964; June 13, 1964; June 14, 1964 and June 20, 1964 are to be closed to general research until 1987:

1. page 52 line 42 - page 53 line 32
2. page 74 line 20 - line 32
3. page 81 line 22 - line 38
4. page 88 line 42 - page 93 line 16
5. page 98 line 42 - page 99 line 6
6. page 100 line 16 - line 29
7. page 108 line 42 - page 109 line 12
8. page 111 line 42 - line 45
9. page 112 line 20 - line 26



Burke Marshall



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By Burke Marshall

to the

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- Page 10 line 11 through line 13
- Page 17 line 25 through line 36
- Page 18 line 16 through line 18
- Page 19 line 31 through line 41
- Page 20 line 27 through line 33
- Page 21 line 6 through line 20
- Page 22 line 22 through line 33
- Page 24 line 15 through line 16
- Page 33 line 35 through line 38
- Page 34 line 40 through page 35 line 7
- Page 40 line 17 through line 21
- Page 42 line 17 through line 24
- Page 43 line 15 through line 25
- Page 48 line 19 through page 49 line 1
- Page 49 line 15 through line 20
- Page 50 line 32 through line 39
- Page 51 line 2 through line 5

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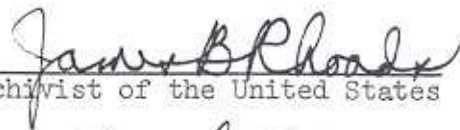
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Burke Marshall

March 6, 1972

Date



Archivist of the United States

March 27, 1972

Date

Second of Five Oral History Interviews

with

Burke Marshall

May 29, 1964
Washington D.C.

By Louis F. Oberdorfer

For the John F. Kennedy Presidential Library

OBERDORFER: Would you relate what happened at the church in Montgomery after the marshals assisted by the National Guard brought the mob under control?

MARSHALL: We had conversations with the people inside the church, Dr. King [Martin Luther King, Jr.] and others, and also, as I remember it, with the General. Isn't it [the tape recorder] working?

OBERDORFER: Say that.... What happened after that, Burke?

MARSHALL: After the mob was brought under control, there was still a lot of people outside the church, and we talked about it with Dr. King and others inside the church and with I think it was General Graham [Henry V. Graham].

OBERDORFER: Who was General Graham?

MARSHALL: He was the ranking general in Alabama, and he was in charge of the National Guard. Governor Patterson [John Malcolm Patterson]

declared martial law that night, and General Graham was in charge of the National Guard troops who came out. And the...

OBERDORFER: And he spoke on the phone with you in Washington?

MARSHALL: Yes, he did, yes.

OBERDORFER: From the church?

MARSHALL: From the church or nearby the church. I think it

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was from the church. There were still a lot of people around, although order had been restored, and there was a question about how the people in the church should be taken out and brought home. It was not until sometime after midnight, quite late, before General Graham and the people that were on the scene there determined that they thought it was safe for the crowd in the church to start going home in small numbers. Some of the people, I think, spent the whole night in the church.

OBERDORFER: These arrangements were made directly between General Graham on the telephone in Montgomery and yourself and the Attorney General [Robert F. Kennedy] in the Attorney General's office in Washington?

MARSHALL: Well, I wouldn't say that the arrangements were made between us. General Graham was not following directions from Washington. He was making his own determinations. But they were discussed, and I believe they were discussed with Byron [Byron R. White] and you, and other people down there at the time, also.

OBERDORFER: But there was a point then, just thinking of a legal situation, where the control of the area reverted from the marshals to the National Guard under command of General Graham.

MARSHALL: Yes. As soon as the Governor took steps to exercise the state's responsibility to enforce order in the area, we stopped; and that was the legal situation. And there was a period of cooperation in between; but as I remember it, the marshals were withdrawn that night from the area of the church, back to Maxwell Field, and the situation in the city was left up to the National Guard. In the days after that, the bus station, for example, was patrolled by National Guard troops, not by marshals. Marshals never exercised any law enforcement responsibility at all from that moment on, from the moment the National Guard was called out and the state really took hold of the situation.

OBERDORFER: I have the impression that the marshals, having been sent out originally

to serve that temporary restraining order and then to maintain the free flow of commerce pursuant to the court's order during the day on Sunday, having gone out in the early hours of Sunday morning, were withdrawn and returned to Maxwell Air Force Base very early on Monday morning so that I think you'll find they were on the streets or off the federal reservation for less than twenty-four hours.

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MARSHALL: Yes, I think that's right. I think from Sunday—there were some in the city during Sunday; there were a number outside the church on Sunday night, and they were exercising a police function there Sunday night. But then they were taken completely away when the state exercised its police functions. And they were never—not only there, but they were never used again in that episode.

OBERDORFER: I think that some of them were stationed at the courthouse during the trial on the preliminary injunction.

MARSHALL: That's right. About ten days later.

OBERDORFER: At the Federal Building.

MARSHALL: That's right. But they weren't performing a police function; they were performing a regular service that a deputy marshal does in any court.

OBERDORFER: It's just that the deputy marshal in that courthouse was reinforced by some deputy marshals that had been brought in for that purpose.

MARSHALL: Because of the numbers and the tension, and the possibility of disorder in the courtroom. But they were performing their functions simply as officers to the court.

OBERDORFER: During this episode beginning with the bombing of the bus in Anniston and the riot in Birmingham and on through the other parts that we haven't related, could you identify the other officials in the government who might have had a role in this, who would be, for instance, appropriate persons to interview? Were there any communications with the senators from Alabama by the President [John F. Kennedy] or the Attorney General?

MARSHALL: Well, I think there were some for information purposes, but that's all. The senators didn't play any role in it. I'm quite confident that the Attorney General talked to both of them, explained the situation to them, and I don't think there was any disagreement from the senators as to the necessary—although they publicly criticized the President and the Attorney General, I don't think they disagreed really with what was done. I think they disagreed with their governor much more than with the federal officials.

OBERDORFER: There was some public statement by the Alabama

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delegation, as I recall.

MARSHALL: There was a public statement that criticized the President and the Attorney General for what they did; but as I say, I think that was a public statement. And as I remember it, the senators were informed at the time. They weren't asked to do anything, but they were informed. And I think they didn't like the situation, but I don't believe either of them thought that anything was done that didn't have to be done by the President and the Attorney General.

OBERDORFER: Did the Vice President [Lyndon B. Johnson] participate in any phase of this?

MARSHALL: Not to my knowledge.

OBERDORFER: Was he kept informed?

MARSHALL: I don't know. Not that I know of.

OBERDORFER: Now, were there any other Cabinet officers involved outside of the defense establishment?

MARSHALL: Not on the Freedom Ride. Not that I remember on that occasion.

OBERDORFER: Any other White House personnel involved?

MARSHALL: Not that I talked to. I mean I'm sure that the White House.... I think the President was directly informed on the important development by the Attorney General, and I don't think there were any. There were no White House staff meetings, there was no White House staff participation in decisions.

OBERDORFER: Now, after the arrangements were made with General Graham for the return of the people in the church to their homes, were there subsequent events which you consider noteworthy related to this episode?

MARSHALL: Well, the National Guard restored order. There was still a tense situation in Montgomery and there were incidents, but there were no mob scenes after that in Montgomery. The next problem that came up was the problem of what happened next to the Freedom Riders. All during the preceding week this matter was the focus of a great deal of national attention and there were a number

of people all throughout the country that gave advice to the federal government and there were a number of them that wanted to do something about it. Some of them came down to Montgomery.

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The one that was prominent at the time was a chaplain of Yale University, Reverend Coffin [William Sloane Coffin, Jr.]. And he came down and I discussed that with him at some length. I didn't think he should come down. He came down to Montgomery after martial law had been declared, after the National Guard had taken over, and he came down as sort of a Freedom Rider and got himself arrested in Montgomery on the charge of disturbing the peace. And there were others, there were a number of people coming in. The Freedom Riders' rides weren't over. They started out to go to New Orleans, and there were still a great many people that were determined that that Freedom Ride go through to New Orleans. And that was their right of course; and it was not only their right, but if violence wasn't to defeat rights, I suppose it was important that the ride be finished. So the problem that came up next week was, What about Mississippi? The information that we had about Mississippi was very discouraging. We talked, for example, in the situation with former Governor Coleman [J.P. Coleman].

OBERDORFER: Who is we?

MARSHALL: The Attorney General did, and I did, a number of people.

OBERDORFER: Was this conversation with Governor Coleman by telephone or did he come in to see you?

MARSHALL: No, I called him. I called him at the suggestion of the Attorney General, and I had talked with Governor Coleman before. Governor Coleman was one of the few supporters of President Kennedy in Mississippi and he is a very good lawyer and a fine man, and so we called on him for advice. As I remember it, he had no faith at all in Governor Barnett [Ross R. Barnett] and he said that if those people came into Mississippi, the bus will be stopped and they'll all be killed. And we got that kind of report from almost everyone that we talked to—that I talked to at least—in Mississippi, and that was anyone that I knew, really, that I could count on giving information. But despite that, everybody was agreed at the Department—and I'm sure the President was agreed, though I don't remember any discussion of it with him—that the Attorney General, and Byron, and I discussed it very specifically about Mississippi, whether it should be a bus going across Mississippi, in view of this information, should be accompanied by federal force of some sort or not. That was very specifically discussed, and it was decided that our responsibility was, despite all reports, to try to make the state of Mississippi bear the responsibility for law and order. And that was a difficult decision, because, as I say, people told us that if the bus wasn't escorted by federal officials the riders would be killed.

And as I say, I don't remember that I was in any discussion with the President about this, but the Attorney General certainly talked to the President about it. We decided we had to put it up to the Governor of Mississippi, what his attitude was, and the Attorney General talked to him, and I talked to him. I think the President did not talk to Governor Barnett. Governor Barnett said that he was going to keep the peace in Mississippi, and we accepted his—as I think we had to—we accepted his word on that. And then during the early part of the next week, based on that assurance from Governor Barnett, there were arrangements made which required discussions with Floyd Mann [Floyd H. Mann] in Alabama, and Governor Barnett, and Colonel Birdsong [T.B. Birdsong] who was head of the Mississippi Highway Patrol, and General Graham in charge of the National Guard in Alabama, and the FBI [Federal Bureau of Investigation], and Byron, and the Attorney General and me, piecing out an arrangement, a plan for the escort of the bus carrying a load of Freedom Riders from Montgomery to Jackson. And that was worked out and the bus went. It was escorted, very fully escorted, by Alabama Highway Patrol cars and press cars and a helicopter, observed by the FBI from Montgomery to the Alabama-Mississippi border. And there it was picked up by a large number of Mississippi Highway Patrol cars and escorted at a very rapid speed across the state of Mississippi to Jackson. We had information at that time of two ambushes, one on the Alabama side of the border, and one on the Mississippi side of the border.

OBERDORFER: One was at Cuba, Alabama?

MARSHALL: I think that's right, Cuba. Cuba, yes. And I think those were real, that the information was real, that there were white groups that were intending to ambush this bus and waylay it, and hurt or to kill the occupants. But they were dealt with by the Mississippi and Alabama patrols respectively, and the bus went at a high rate of speed, escorted, across Alabama and across Mississippi and into Jackson.

OBERDORFER: Do you remember the episode where one of the passengers got car sick and the bus had to stop—this was still in Alabama—and the National Guard deployed around the bus and then with fixed bayonets formed a circle around it, right in the middle of nowhere, while this poor fellow got out and got sick, then they put him back on the bus and everybody got back in the trucks and went on?

MARSHALL: I'd forgotten that. But it was a remarkable thing. There was a sort of changing of the guard at the border. That bus came up to the border and the

Alabama Highway Patrol delivered them into the hands of the Mississippi Highway Patrol, Floyd Mann and Colonel Birdsong saluting each other across the border.

OBERDORFER: Another thing about that you may remember was the surveillance that was maintained by the border patrol. They put up an airplane with a radio relay because the radio cars couldn't radio all the way back. The border patrol put first one airplane and then when that airplane approached the end of its radio range, a second airplane; so that they had a relay from the car to the plane to the second plane back to the base, so that everybody could be informed of the progress or lack of progress at the time.

MARSHALL: Well, I remember that. We did—we made a lot of arrangements to make sure we knew what was going on all the time, follow the progress of this bus. Of course as a matter of fact, right at the head of the procession and right at the end of the procession there were carloads of newsmen with television cameras so it was the easiest thing in the world to watch that bus go across the countryside of Alabama.

OBERDORFER: One of the other cute things about that, after Governor Barnett had become committed to the idea of protecting the bus, there was a conversation the night before it left between Governor Barnett and Byron, in which Governor Barnett invited Byron to get on the bus and come over to Jackson and have dinner with him. He said something to the effect, "You'll have the nicest ride. You'll be just as safe as you were in your baby crib."

MARSHALL: Yeah. I never had a conversation with Governor Barnett in which he didn't end up by inviting me to come on down there and see how peaceful it was in Mississippi. [Interruption]

OBERDORFER: Now, you state that the bus ride from Montgomery to Jackson with all of the surveillance and protection was apparently a safe passage. What happened at the destination?

MARSHALL: Well, it wasn't nice there for the Freedom Riders. It was a safe passage despite all these dire predictions that we'd had from very responsible, sensible people like Governor Coleman. But I think certainly one reason for that was that everybody in Mississippi had been told by their governor and by Mayor Thompson [Allen C. Thompson] they were going to deal with this matter under law. What they meant by that was they were going to put the Freedom Riders in jail,

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and that's what they did. As soon as they reached Jackson, got off the bus, a biracial group went into the white waiting room, which was of course being conducted contrary to federal law, and they all got arrested and charged with disturbing the peace and whisked off to jail. And that was the beginning, that was the first bus ride. As soon as that happened, of course another bus load came, and there was concern about their safety. And they got across all safe, and they got to Jackson, and then into jail they went. I talked to some of these people in jail

in Mississippi, in Jackson. It was all very friendly. The Chief of Police, the Mayor, the Chief of Detectives, we'd all talked to each other about how the conditions were in the jail and whether the prisoners were going to have bail that night or the next morning, when they were going out, whether they were going to get out of Mississippi or not when they got out of jail. And that's the way it went all summer: the Freedom Riders coming down and ending up in the jail in Mississippi. The problem was finally resolved because as a result of the Freedom Ride incident, in fact while it was still going on, we in the Department of Justice started looking to the future and trying to think of a way to deal with this problem on a comprehensive basis. And that work was done by lawyers in the Office of Legal Counsel, under Nick Katzenbach [Nicholas deB. Katzenbach], Harold Reis [Harold F. Reis], and others in that office. And they, with lawyers from my division, lit upon the idea of asking the Interstate Commerce Commission to issue rules. And so as shortly as we could after the Montgomery riots and while people were being arrested in Jackson, we prepared a petition to the ICC [Interstate Commerce Commission] that was filed on behalf of the United States that sought to bring this situation under some sort of enforceable law by imposing rules on the bus companies that they could not use terminals that were segregated—whether they were segregated by police action, or by action of the owners of the terminals, or by actions of the bus companies. And that was really a remarkable administrative law achievement, I think, to have these rules put to the ICC, which was a conservative, very difficult administrative body to deal with, and have them approved within a fairly short time so that they became effective in the fall. That was the first massive desegregation of anything that had been accomplished.

OBERDORFER: Would you say that that was the principal tangible consequence of the Freedom Ride or would you attribute other consequences to it?

MARSHALL: No, there were many consequences, but that was the specific consequence. But I think that the Freedom Rides were a continuation of something that had started in 1960 and which progressed and became a major element of the history of the country during President

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Kennedy's administration, which were protests, demonstrations to show conditions that existed that were beyond the limits of permissibility of federal law all over the South—bus stations were one condition; there were many others—and really demonstrated to the country and opened the eyes of the country for the first time to the caste system that of course everyone knows the South was already acquainted with, but which the rest of the country didn't know much about.

OBERDORFER: What is the present status of the litigation growing out of the mass arrests in Jackson in 1961?

MARSHALL: Well, the people arrested are still, they are still in some difficulty. These arrests were unconstitutional in my opinion without any question, but...

OBERDORFER: For what reason were they unconstitutional?

MARSHALL: Well, they were arrests, they were police action to enforce segregation in a place that was prohibited by federal law from being segregated. So that I think they violated the 14th Amendment for that reason.

OBERDORFER: Under the supremacy clause.

MARSHALL: They violated the supremacy clause, and they violated the 14th Amendment, both. They were police action, police action that was intended to enforce conduct that violated the Interstate Commerce Act, and that violates the supremacy clause. And they are also official enforcement of segregation which violates the 14th Amendment. But the fact in the matter is the federal process works in such fashion that the persons that were arrested are still in the process of contesting the validity of their arrests. I think it was only a few weeks ago that the arrests of a number of Freedom Riders in 1961 in Jackson were affirmed by the Supreme Court of Mississippi. Now they'll go up to the Supreme Court of the United States. There was federal litigation which was intended to enjoin persecution of the Freedom Riders but that was unsuccessful.

[END OF INTERVIEW #2]

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