

**Burke Marshall Oral History Interview – JFK#4, 6/14/1964**  
Administrative Information

**Creator:** Burke Marshall  
**Interviewer:** Anthony Lewis  
**Date of Interview:** June 14, 1964  
**Place of Interview:** Washington D.C.  
**Length:** 22 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 the violence surrounding James Howard Meredith's enrollment at the University of Mississippi, the contempt of court case against Mississippi governor Ross R. Barnett, and John F. Kennedy's judicial appointments, among other issues.

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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

  
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By Burke Marshall

to the

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- 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
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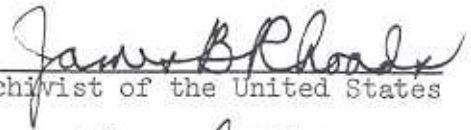
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Burke Marshall

March 6, 1972

Date



Archivist of the United States

March 27, 1972

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Burke Marshall—JFK#4

Table of Contents

<u>Page</u>	<u>Topic</u>
72	Violence surrounding James Howard Meredith's enrollment at the University of Mississippi
83	Contempt of court case against Governor Ross R. Barnett
85	Deputizing federal marshals during the Freedom Ride riots and other incidents
87	John F. Kennedy's judicial appointments

Fourth of Five Oral History Interviews

with

Burke Marshall

June 14, 1964  
Washington D.C.

By Anthony Lewis

For the John F. Kennedy Presidential Library

LEWIS: Burke, let's proceed to the long story of Oxford, Mississippi. We might as well begin at the beginning and just say how the issue of James Meredith's [James Howard Meredith] admission to the University of Mississippi first came to your attention.

MARSHALL: There was a case filed by Meredith. I don't know exactly when. But among other things, shortly after I came into the government I went over all the matters that were pending in court that might cause problems for us, and one of the matters was the fact that there was an application and litigation involving the University of Mississippi. Meredith, I think, applied in January, 1961, and as a matter of coincidence he applied just before or just after inauguration. There was a rumor that was widely believed in Mississippi in 1962 that President Kennedy [John F. Kennedy] or the Attorney General [Robert F. Kennedy] had something to do with stimulating Meredith's application, but the fact is the President didn't know anything about him, I'm sure, until September of 1962, and I doubt that the Attorney General knew anything about him until about that time too.

LEWIS: Then you must have brought to the Attorney General's attention the fact that the Court of Appeals for the Fifth Circuit had directed his admission

at the beginning of the fall term of 1962, and that this would not be an easy thing to accomplish, that it might be difficult.

MARSHALL: That's right. We were brought into the matter officially by a request from the Supreme Court for the views of the United States on a stay petition that had been filed with Justice Black [Hugo L. Black] as the circuit judge for the Fifth Circuit. And that was in late

[-72-]

August. That was the first time we were officially in the case, but that I knew about the case before. I think that was the first time probably that the Attorney General knew anything about it.

LEWIS: What did you envisage at that time? Did you envisage the kind of absolutely ruthless resistance, the lawless resistance that actually transpired?

MARSHALL: As soon as Justice Black did set aside a stay that had been issued by Judge Cameron [Benjamin F. Cameron] of the Fifth Circuit—and that was around Labor Day of 1962—and after he had done that so that the order of the court became effective for the fall term, Governor Barnett [Ross R. Barnett] made a television speech in which he invoked the doctrine of interposition and it was perfectly clear from that time on, if it hadn't been clear before, that we were going to have a very difficult time. It was a question from that moment, which was around September 10th, 9th or 10th, of trying to turn the state of Mississippi away from the course of actual insurrection.

LEWIS: And when did the President become involved in the effort, as you say, to turn Mississippi from that course?

MARSHALL: I can't.... I'm just not sure in my own recollection about when he was first told about it, but it would have been in early September.

LEWIS: Do you remember an early meeting with him? I'm trying to get at what his first reaction to the situation may have been, if you recall. Or if not the first, what do you recall about his comments or attitude in this early preliminary period, before any action?

MARSHALL: I think the.... I don't remember talking to the President about it until the day or two days before—that would be the Friday, September 28th—two days before Meredith actually entered. Now, I don't remember it. I'm sure that he knew that the problem existed and he was just leaving it up to the Attorney General and the Department of Justice to deal with it as best they could. We'd been to court during that week. We'd had civil contempt proceedings against the university officials and then against the board of trustees, and they received a good deal of attention, and I was out of



town in court on that matter, so I imagine there were probably meetings with the Attorney General and the President during that week. But the first time that I remember being with the President and talking about it would have been Friday, September 28th.

[-73-]

LEWIS: When had the conversations between the Attorney General and Governor Barnett begun? Had there been any before that date, telephone conversations?

MARSHALL: Oh, yes. Yes.

LEWIS: When did they begin?

MARSHALL: They began at least a week before that. The Attorney General's effort was to persuade Governor Barnett to give up the course of action he was taking, which, as I say, led to insurrection. And everything that we did was with that purpose in mind—everything that was done by the Department of Justice during the week that preceded the riots at Oxford which was the week that we started; September 23, I guess. There were a number of conversations with the Governor, and also some conversations that I had with Tom Watkins, who was an attorney who represented the Governor and represented the state of Mississippi at least informally in these matters. Those conversations have all been photographed to the extent they were transcribed in the Department of Justice. At least after the first ones there were notes taken by a secretary, and those were all transcribed. And then on Saturday, September 29th, when the president spoke with Governor Barnett, himself, those were recorded with a tape recorder that Mrs. Lincoln [Evelyn N. Lincoln] had in her desk, with the exception of one. The one exception was when Mrs. Lincoln recorded a conversation that was on a different line other than the one between the President and the Governor.

LEWIS: A technical error.

MARSHALL: A technical error. In fact, I think she recorded the conversation between Mrs. Kennedy [Jacqueline Bouvier Kennedy] and the President, so she told me later.

LEWIS: That will have historic value too I'm sure.

MARSHALL: Well, I don't know if that exists.

LEWIS: Probably not. Going back, let's carry the President through here. Tell us first about the meeting of Friday, September 28th. What was that?

MARSHALL: Well, that was after.... On that day in New Orleans we'd had a proceeding before the Court of Appeals that was a contempt proceeding against

Governor Barnett, and we had one the next day against Lieutenant Governor Johnson [Paul B. Johnson, Jr.], which was based upon their

[-74-]

violation of an order issued by the Court of Appeals on the preceding Tuesday or Monday night. On Monday the university board of trustees had, in open court, agreed that they would obey the order of the court. And I remember I called the Attorney General—I went out of court and called the Attorney General and told him this had been done. And he immediately called the Governor. And Governor Barnett wouldn't believe it. He hadn't heard it. The first he had heard of it was from the Attorney General, and he said, "I can't believe that. They've let me down." But following that proceeding in court, we obtained an order against Governor Barnett to restrain him personally from interfering. And the next day he nevertheless did interfere and the following day after that Lt. Governor Johnson blocked the entrance of Meredith, and the day after that we almost had a war at Oxford.

We sent Meredith down with a group of marshals following a conversation that I'd had with Tom Watkins which wasn't transcribed or recorded in any event, but Watkins had advised me after talking to the Governor that if we made a show of force that they would let Meredith and the marshals through. And there was a show of force made on that basis on Wednesday by Jim McShane [James J.P. McShane] who tried to push Johnson aside a little bit. He didn't get through, and I talked to Tom Watkins again after that, and he said, "Well, there wasn't a big enough show of force." And then on Thursday it was arranged for Meredith to go down with about twenty-five marshals and be admitted, and that was. He started down and we called it off at the last minute, because the Governor and the Lieutenant Governor were clearly not in control of the situation. We would have had a great deal of shooting and I'm sure a number of people would have been killed. That was on Thursday.

Then on Friday we did have a contempt order against Governor Barnett which had the deadline of October 2, which was the next Tuesday. And I was in court to obtain that order, and as soon as it was finished I went back and I got on an Air Force plane and came back to Washington and I think went almost immediately over and met with the Attorney General and President Kennedy in the White House about the situation. It was decided that President Kennedy would, himself, make an effort to avoid what appeared to be going to happen. What appeared to be going to happen was Barnett was intending to put state patrols and a whole civilian array up there and we would have to send troops in and fight their way through these people. That was as it looked on Friday night, and on Saturday. And we had conversations. The President called the Governor.

LEWIS: Are we still at the Friday meeting?

[-75-]

MARSHALL: Well, the situation was explained in full to President Kennedy on Friday evening, and he decided that he should make an effort to avoid this, and he called, I think, not on Friday evening, but on Saturday to Governor Barnett. That conversation was recorded and a transcript of it exists. The way it came out—

and it may have been more than one conversation, and one of them, as I say, was by technical error not recorded—Governor Barnett agreed on Saturday that he would arrange for Meredith to be registered in the University of Mississippi in Jackson, on Monday, secretly, and that in the meantime the Governor was going to have his army up at Oxford. And then he said he would announce to all these people that Meredith had been secretly registered in Jackson, and that the affair was over and they must all respect law and order and it was too late and he couldn't do anything more. That was what the Governor agreed to. That agreement was made in a conversation which I heard in part, and which was a floating conversation in that the Governor was talking sometimes, the President was talking sometimes, the Attorney General was talking sometimes, and Tom Watkins was talking sometimes.

Then on Saturday evening about 9:00 or 10:00, Governor Barnett called the Attorney General at his home and said he couldn't do this. At that time it was decided that the President would have to issue a proclamation, and we had to make preparations to use military forces if necessary to get Meredith registered. So he did issue a proclamation on Saturday night very early Sunday morning.

LEWIS:           Midnight Saturday night, exactly.

MARSHALL:      That's right. You were here [at the Marshall's house].

LEWIS:           Playing bridge.

MARSHALL:      Yeah. Then on Sunday we made—I say we, the Attorney General and I—made a final effort on it on Sunday to persuade Barnett to stop this because it was perfectly clear that what he was intending to do would involve an armed conflict between United States troops and citizens of Mississippi. And I think that the Attorney General placed a call to the Governor, and that conversation, which was first between the Attorney General and the Governor and then between Tom Watkins and me, and then between the Attorney General and the Governor again, is transcribed and a record of it exists. But the essence of it was that the Attorney General told Governor Barnett that the President was going on the television that night to explain to the country what he would have to do, which was to use military forces to enforce a court order, and

[-76-]

that in the course of his explanation to the country he was going to have to tell how the Governor had made this agreement for the secret registration of Meredith and then had backed down on it. And that was the only thing at any time that made an impression on the Governor. And he pleaded in a childish, whining sort of way the President not do that.

At that point he asked the Attorney General to talk to Tom Watkins about it and the Attorney General wouldn't talk to Tom Watkins, so he asked me to, and I did. And Watkins agreed, with the Governor there present, that Meredith could be taken down to the university that night, that afternoon, Sunday afternoon, and be registered and that the state police would cooperate and maintain law and order and there would be no resistance. And that was the way that the arrangement was made for what was done on Sunday evening.

Then the President was informed about that, and the President postponed a television broadcast that he had arranged for until we had time to get Meredith down there. That was necessary at the time, I think, but it was very difficult, of course, for the people that were on the scene who didn't know what was going on. We had army people who had been assembled at Memphis, troops, we also had a number of marshals who had been assembled at Memphis. They didn't expect they'd be called to do anything on Sunday. Lou Oberdorfer [Louis F. Oberdorfer] was told at about 1:00 on Sunday to move the entire force of marshals with tear gas equipment and other riot equipment, and Meredith down to Oxford, within the course of the next four hours or so. It was a mammoth undertaking for them, though they accomplished it. But it required...

LEWIS:           Where was Nick [Nicholas deB. Katzenbach]?

MARSHALL:      Nick left.... I think Nick left for Oxford in the afternoon, I believe. He was not there when we had this conversation with Barnett and Tom Watkins, but I think it was after that conversation that Nick flew down there.

LEWIS:           From here?

MARSHALL:      From here.

LEWIS:           When did the President first decide to make this television speech? On Saturday night after the failure of the first agreement with Barnett?

MARSHALL:      Yes. Yes. He wanted to make a television address

[-77-]

in order to explain to the country what he was doing, which was a terribly serious effort. I mean it was not.... General Eisenhower [Dwight D. Eisenhower] used troops at Little Rock, but he had done it in order to take them away from Governor Faubus [Orval E. Faubus], federalizing the National Guard. But this was different and much more dangerous and much more disastrous because Barnett was intending, as of Saturday night and Sunday morning, to have lines of state police and sheriffs and deputy sheriffs and then a citizens army surrounding the campus. And it appeared on Sunday morning that Meredith would have to be taken through this business by military and that thereafter probably Governor Barnett would have to be arrested. And that would...

LEWIS:           Charged with treason or something of that kind.

MARSHALL:      Well, he would have been in violation of the civil contempt order. The civil contempt order called for him ceasing his interference by Tuesday, October 2, and if he hadn't, under the order, he was to be committed to jail, as well as fined heavily. There was a rumor, I remember, I think on Saturday or Sunday morning, that Barnett was going to be arrested, and within minutes there were two or three

thousand people around the Governor's mansion to protect him against the arrest by federal authorities. So the situation was much, much more serious than anything that had been faced in the implementation of the Supreme Court's decisions up till that time.

So President Kennedy intended to go on television and explain this. Well, his speech of course, he couldn't tell what he was going to say until what happened. When we made this arrangement with Barnett on, in the middle of Sunday, it was certainly the best thing to do because it voided a direct conflict between the state officials and federal officials, military, shooting. But he couldn't know how it would come out or anything so he had the problem of postponing the speech, which I think he did twice, until he saw how it happened.

And then it did—I mean we did.... There was a physical problem of getting these signals rearranged, getting marshals down there, getting the marshals in control of the campus and seeing that the state police were really cooperating, and bringing Meredith in and putting him on the campus and so forth; all of them were faced within a very few hours. And that was done. It was done. The Attorney General and I and everyone else in the Department of Justice went down there, virtually. Lou Oberdorfer was down there. Nick went down. Norb Schlei [Norbert A. Schlei] was down. Harold Reis [Harold F. Reis] was down. I

[-78-]

think Ramsey Clark went down later. John Doar [John M. Doar] was down there with Meredith. Joe Dolan [Joseph F. Dolan] was down there. Ed Guthman [Edwin O. Guthman] was down there. We talked with the people in Oxford and the people in Memphis through the afternoon, and then it appeared that it was accomplished. Meredith went on the campus, and the state police brought him on. When we left the department to go over to the White House for the last minute review of what the President was going to say...

LEWIS: Had you done any drafting of the speech before that?

MARSHALL: Yes, there was a draft of the speech in which.... There were really two speeches that the President had in mind. One was a speech if we had a war going on in Oxford, and the other was a speech if we didn't have a war. He used the speech...

LEWIS: The latter.

MARSHALL: The latter speech.

LEWIS: All about L.Q.C. Lamar [Lucius Quintus Cincinnatus Lamar] and so on.

MARSHALL: That's right. And it was conciliatory to the state of Mississippi and to the South because.... Although it was done by Governor Barnett for the most cynical of reasons, nevertheless he had finally given up this destructive course of being in rebellion, and so the President wanted to make a speech that healed wounds and not some other kind. And he did. I think it was completely ad-lib, he added to the speech the plea to the students. And of course as it turned out tear gas had to be used just

as he started the speech, and I am not sure whether, when he gave that speech, he knew that had happened or not. I just am not sure.

LEWIS: Did you see him afterwards?

MARSHALL: Oh, yes.

LEWIS: And what did he say afterwards when he was informed, as he must have been, that the riot was going on?

MARSHALL: Well, again, he accepted it. He'd been through this sort of thing before. I guess the thing he thought of was the Bay of Pigs. He didn't know...

LEWIS: Did he mention that?

MUSHALL: Well, I think so. And it was so clearly in people's minds at the time. When he finished his speech, it

[-79-]

was still a student riot was all it was. Tear gas had been fired, but it was still just a student riot. It was unpleasant, but you couldn't tell how it would go. Our information, we had an open line with Nick in which Nick was on the phone sometimes with Joe Dolan, Dean Markham [Dean F. Markham], Ed Guthman, so we got constant intelligence about what was going on. And at the time he finished his speech it wasn't too bad, and they advised us they thought they could keep it under control. But then of course as the evening went on and people started arriving with guns and shooting at the marshals...

LEWIS: And the state troopers left.

MARSHALL: ...and the state troopers left, it got much worse. We talked during the course of that with Governor Barnett again and Tom Watkins again about the state troopers. At one point I know that the state troopers who had left were put back on the campus and then they left again. The difficulty, of course, was that Barnett had made this arrangement. He had done it for very cynical reasons. And he hadn't told anyone, and the people that he had sent up there in charge of the state troopers were two state senators. And they thought they were going to war. So I suppose that as I look back on it, it was impossible that it be done without a good deal of problem, of violence, really. But nevertheless it was much less than what had been contemplated in terms of the troops fighting their way through these lines of state police, sheriffs, and deputy sheriffs and citizens. I am sure that if Barnett hadn't given up that plan that the Monday would have been a very, very bloody day in our history.

Now the President, as I say, he accepted what was happening, and what he thought about was the army and the reaction of the army to this. By a certain amount, I guess within a fairly short time after the riots started, we concluded, based upon what Nick particularly told

us and other people told us from Oxford, we concluded that we had to send the army in. And so that order was given. The proclamation of the President had already been issued the night before and an executive order was prepared. And it was just a matter of a minute to sign it. The executive order directed Secretary McNamara [Robert S. McNamara], who in turn directed Cy Vance [Cyrus R. Vance], who was Secretary of the Army, to take action when action was necessary to bring the thing under control. And that involved calling out the National Guard which was already planned and in motion, and it also involved bringing down some military police troops from Memphis who had been placed in Memphis for the purpose. They were on an alert.

We had a time—I can't remember the exact, but say it was

[-80-]

ninety minutes from the time they were ordered in that they should have been on campus at Oxford. Well, they weren't. And the reason that they weren't—there were various reasons; I believe one of them was they used planes that were going to transport the army back down to Memphis, they used the planes that were supposed to be set aside for that purpose—to go and get some more tear gas supplies from Atlanta to bring that to Oxford was one reason. Another reason was that when Meredith went on to the campus with the assistance of the state police at 6:00 in the afternoon, it appeared the reason for the troops being there was gone, and they just relaxed. It wasn't that they were taken off an alert but they just relaxed, and they went back to the barracks instead of staying on the air field.

And the President's concern—the thing that struck me about him that night, you know, when reports of the deaths, people being killed, some of them we'd get rumors, you know, about more deaths than actually occurred, but one of the marshals appeared to be dying—he didn't die, but he appeared to be—and there was a report one of the state troopers had been killed by a tear gas explosion. The President's concern was the fact that the army wasn't living up the schedule. They'd said ninety minutes or whatever it was and they weren't there. So he kept calling up Cy Vance and talking to him about this, and he told Cy what if this, you know, were real, we were having an invasion or something, getting in a war, it wasn't just a question of sending troops in to quell a riot but that you had to use troops for some international crisis. It was much more serious, and so during that night he kept talking to Cy about this. He'd call up Cy and Cy—this happened two or three times—Cy would say, "They're there, they're in the air," or, "they're landing" or something. And then through our own channels we would know that they weren't, they were still in Memphis. And I remember at least two times the President was informed by Secretary Vance that the army had reached Oxford, and I told the President that I understood they were still in Memphis. And of course that was a hell of a thing for the army to not know where their own men were and to misinform the President at a matter of *some* crisis at least.

He thought about it in terms not so much of blaming anyone or complaining about the situation but of the future. And I believe that the next morning, Monday, the President insisted on Secretary Vance and the Joint Chiefs all having a meeting. They changed procedures. There was a great deal of action taken following that night which had a bearing on the speed with which the army responded during the missile crisis later that month.

LEWIS: Did the President stay up all that night? Were you

[-81-]

with him all that night?

MARSHALL: He stayed up until pretty near 4:00 in the morning. I think he went to bed there, and the last I remember was he went to bed and the army had gotten there, and the army was occupying the places—it was moving in to take over the places where the snipers were in hiding, shooting. He went up to bed and then he called down to his own office. I answered the telephone and he asked if things were getting under control, and I told him yes. That was about 4:00 in the morning probably.

LEWIS: Was there any discussion during those early morning hours, any kind of musing by any of the parties in the room about, really, the idiocy of the reason for all this? This was one man with a black skin going into a university, and all of this was because of that.

MARSHALL: Well, of course.... No, I don't remember.... I think everybody was so concerned with the immediacy of the thing. We'd get reports of.... You see the whole thing in a way is absurd. The marshals were surrounding the Lyceum building, and the students and later the people that came in from the outside were attacking the marshals at the Lyceum building. Well, Meredith wasn't in the Lyceum building at all; he was over in his dormitory in Baxter Hall and he'd gone to bed. So they were having this riot and fighting and the principal target of it all wasn't even in the building that the riot was aimed at. Now, we got reports two or three times that night that the direction of some of the rioters had changed and that they were going after Meredith.

LEWIS: That would have been much worse, wouldn't it?

MARSHALL: Well, it was not.... You see the marshals were under great restraint. They were not permitted to fire back. At least twice during the evening they asked permission to return fire.

LEWIS: They had guns.

MARSHALL: They had guns. And the permission was refused. And there had been a few people killed...

LEWIS: By whom? Who refused permission? Nick?

MARSHALL: Well, I guess maybe it was the Attorney General, I mean the question was put to us in the White House and so the decision was made there. Except, the



instructions were, in order to protect Meredith himself. Now we had twenty marshals in Baxter Hall with Meredith, and they could have protected him I think. But if there had been an invasion they would have had to shoot and they would have had to probably kill some people. And I'm sure that would have been, in terms of the bitterness which was bad enough anyway, would have been much worse if federal officials had had to kill or seriously injure anybody.

LEWIS:           Was that ...

MARSHALL:      But, the President, again, he was.... What happened was bad—well, it wasn't as bad as what we thought was going to happen, but it was nevertheless bad. It was interesting to me that, at the time and has been since, instead of complaining about what was going on, or bemoaning it, or even worrying about it, what he was concerned with, what he did do something about, was the way the army responded to this situation.

LEWIS:           He just took the situation for granted.

MARSHALL:      As I say, I think that what happened, in a way, that that contributes a great deal to the speed to which the build up in Florida for a possible invasion of Cuba was dealt with later that month.

LEWIS:           Was that the last of your personal contact with the President in the Oxford matter?

MARSHALL:      Well, we discussed it. I mean I talked to him about that several times afterwards, one way or another. He was always concerned about the contempt case against Governor Barnett.

LEWIS:           What was his concern there?

MARSHALL:      His concern was what was arresting the Governor.

LEWIS:           He didn't like that idea?

MARSHALL:      No, he did not. He did not like it at all. Our experience in what had happened at the time of rumors of the Governor's arrest were such that it wasn't a pleasant thing to contemplate at all. He didn't like it at all. It was politically unpleasant for him. He was in a good deal of trouble politically in the South anyway. He was resented, the Attorney General was resented, and that was a factor. But he just didn't like the idea of arresting a governor at any rate, whatever the circumstances. And then another thing that he

didn't like ever and he never really accepted was the suggestion that if the Governor was going to be tried for contempt, he wouldn't get a jury.

LEWIS: The President thought he should have a jury trial?

MARSHALL: The President did.

LEWIS: That's delightful.

MARSHALL: In fact, I remember after the argument in the Barnett case.... The Solicitor General [Archibald Cox] argued for the government in the Barnett case in the Supreme Court that the Governor wasn't entitled to a trial. And the President called up right when the evening paper came out. I guess he had forgotten or he thought we had changed our position the last time he'd complained about it, and he wanted to know why we were trying to deprive someone of a jury trial.

LEWIS: He called you up?

MARSHALL: Yes. Well, he called the Attorney General and I was there so I talked to him.

LEWIS: Did you persuade him that there were reasons for opposing a jury trial?

MARSHALL: Well, I don't know. I don't think he ever accepted that notion. He accepted it in the sense that he didn't overrule us or anything, but he didn't like it at all.

LEWIS: Then he obviously also accepted the obligation of the government to go through the contempt proceeding even though it might involve at some point arresting Governor Barnett.

MARSHALL: Yes, but he would have been very happy if we had found some way of avoiding it. He didn't like it. He thought the thing was over with, the incident was closed, and he didn't like the whole idea. In fact I heard him make comments about how this—he understood about how the judges felt about it, but he thought the judges should understand how he felt about it at the same time. [Interruption]

LEWIS: Burke, you had one further comment, or some further comments, you wanted to make about the freedom rider crisis in Montgomery, when Dr. King [Martin Luther King, Jr.] was in the church, Byron White [Byron R. White] was outside with the marshals

protecting him.

MARSHALL: Well, it was just a couple of incidents that I remember, and they show—I guess what they show is that we were learning how to deal with these situations. One of them was that among the other people that were deputized and brought down there were alcohol and tax unit people. We never used them again, but we did on that occasion. They weren't in favor of this thing at all. And Byron was in charge of it, and he was at Maxwell Field most of the time, and he sent these groups out.

LEWIS: Let me clarify that. You said they weren't in favor of this thing at all. You mean they were Southerners and they weren't in favor of integration?

MARSHALL: That's right. They weren't.... There may have been exceptions, but I understand that by and large they didn't like that duty at all. Most of the marshals that we have used as deputies in this sort of thing have responded very, very well and outstanding. But they didn't like it. The incident that I remember is when it was reported to Byron that they had arrived at the church, Byron's remark was, "Whose side are they on?" That was one incident I remember.

The other I remember is—as I say, we were learning—when the mob outside the church began to build up, we had gotten together for purposes of transportation a whole lot of post office vehicles because we didn't want to use the army and we didn't want to use army vehicles; we wanted to stay civilian. And Jim McShane, when he heard about this, started sending the post office vehicles out to the church empty. He waved them through, vehicle after vehicle, absolutely empty except for those drivers. The purpose of them was to carry marshals to the church. I suppose it shows that you can't conduct a police operation when you don't have a police force; and the absence of a police force of course was the problem that I think is necessary to live with, but which most people have never understood ever since we sent those marshals to Montgomery.

LEWIS: Did the President ever, in your conversations with him then or afterward, express a kind of sense of wish that we were done with federalism and that we could really deal with situations head-on with a national police force?

MARSHALL: No. No. No, he didn't, and I'm sure no president would. But he didn't like to have to do that. There was no occasion which—we made every effort

[-85-]

to avoid that sort of thing. The President.... Well, I mean, you asked whether he ever got frustrated with the whole system, and I would say no, I think he too highly regarded it to be frustrated with it.

LEWIS: Federalism.

MARSHALL: Yes. Those were the incidents about Montgomery. As I say, after that, this would.... I'm sure these complaints came to the attention of President Kennedy. Over and over again people would want to know what the federal government was doing, why didn't the federal government protect somebody. Even highly regarded people like Dean Rostow [Eugene V. Rostow] of Yale and Dean Griswold [Erwin N. Griswold] of Harvard, suggested that we should have the marshals stationed in every bus station or riding with every bus in the South or that we take action of that sort, you know, which would deeply undercut the local police authority and assert federal authority in an area where it shouldn't be, after we used these marshals in Montgomery. And rightly or wrongly we always resisted that and I'm sure.... And the President.... I mean there was never occasion, even when I talked to the President that I remember of, on things he was irritated with, as I remember he was with Albany particularly, that he suggested the use of marshals or the use of force to change the situation.

LEWIS: Did he ever refer to President Eisenhower in that period, what Eisenhower might have done to ameliorate the situation in the South if he had spoken out earlier?

MARSHALL: I don't remember him ever mentioning President Eisenhower. I did discuss that.... I don't remember ever discussing that with the President; I did discuss it several times with Bob Kennedy, the Aurtherine Lucy [Aurtherine J. Lucy] situation, where the federal government was asked to give assistance, you know, was asked by the university officials, and...

LEWIS: I didn't know that.

MARSHALL: They were.

LEWIS: And said no.

MARSHALL: And said no.

LEWIS: And the President at his press conference said that the state would surely resolve it wisely.

MARSHALL: I don't remember that, but I do know...

[-86-]

LEWIS: I looked it up recently.

MARSHALL: Jeff Bennett—we worked quite closely with university officials in connection with the Tuscaloosa business in June 1963—and I discussed that with him. Frank Rose, who is now president of the University of Alabama, and was at the time Wallace [George C. Wallace] stood in the doorway there, was

not there in 1956. But Jeff Bennett, who is the executive vice president of the university now and was in June 1963 was also there in 1956, and he was with Aurtherine Lucy. He accompanied her. In fact, he was hit on the head with a rock himself. He told me...

LEWIS: Whom had they asked?

MARSHALL: They had asked the Attorney General.

LEWIS: Who was then Brownell [Herbert Brownell, Jr.]. Brownell in 1956.

MARSHALL: It must have been Attorney General Brownell. I don't know who decided to turn that request away, but it was decided. My guess would be it was decided by President Eisenhower, but I don't know that. I had once looked at the Department of Justice file on the Aurtherine Lucy incident, and it was just empty.

LEWIS: Empty?

MARSHALL: Yes. News clippings, was all.

LEWIS: To what do you attribute that?

MARSHALL: I don't attribute it to anything. That's a fact. In fact we pulled it out at the time of the Oxford incident, I think, to see if we could get guidance from what the mistakes we thought had been made before.

LEWIS: But the mistakes were not recorded for history.

MARSHALL: There was nothing. Nothing was recorded for history—mistakes or otherwise.

LEWIS: Burke, let's talk about the judicial appointments President Kennedy made in the South, which have been a subject of considerable criticism. We might mention the names of some of the appointees who have been criticized: Judge Elliott [J. Robert Elliott] in Georgia; Judge West [Elmer Gordon West] in Louisiana; Judge Cox [William Harold Cox] in

[-87-]

Mississippi; on the Fifth Circuit Judge Gewin [Walter P. Gewin], in particularly, and Judge Bell [Griffin B. Bell] to some extent. Have I omitted someone?

MARSHALL: Judge Ellis [Frank B. Ellis] has been criticized.

LEWIS: Not so much on racial grounds as general incompetence.

MARSHALL: That's right. Of course the President appointed some very good judges. I mean, Judge Preyer [Lunsford Richardson Preyer] in North Carolina; Judge Butzner [John D. Butzner, Jr.] in Virginia, Judge Michie [Thomas J. Michie] in Virginia who were very good on this issue.

LEWIS: Bryan Simpson.

MARSHALL: He was a Eisenhower appointment, I think. Judge McRae [William A. McRae, Jr.] has been very good in Florida; Judge Brewster [Leo Brewster] in Texas is outstanding on this. But there were some appointments made that were, I would say, have been very reluctant to do their duty on this area.

LEWIS: Now, what part did the President personally play—we want to keep focusing on the President, but I think we ought to discuss the process by which there was an inquiry made, as there must have been, on whether these men could be expected to, as you say, do their duty. What was that processing of checking and what part did the President play in it?

MARSHALL: I think the President relied on the judgment that was reached in the Department of Justice for a large part—not completely, but in large part I think he did—although he would discuss these appointments directly with the senators. And of course I don't know about what conversations he had of that sort. If he felt differently about an appointment than the Attorney General, and I guess he did on some—not necessarily Southern—if he did, he just went ahead obviously and appointed the person he thought should be appointed.

LEWIS: It's one of the few prerogatives of office.

MARSHALL: Yes. But he did make an effort to judge Southern judges on this question of how they would do their duty in carrying out the dictates of the constitution as decided by the Supreme Court since 1954. I think that for the President and for the Attorney General and for everyone there was an increasing awareness of the importance of that. But the first appointment was Judge Cox of Jackson, Mississippi.

[-88-]

Judge Cox was a friend of Senator Eastland [James O. Eastland], had been a law partner of Senator Eastland. The NAACP [National Association for the Advancement of Colored People], and I guess other civil rights groups, objected to his appointment at that time. The Attorney General, from that appointment and on all these appointments, asked me to make a judgment on how they would perform their function, and I did the best I could on that. Judge Cox had no history. He was not in the Citizens Council [White Citizens Council], which was somewhat of a favorable factor because most of, a great majority of the lawyers in Mississippi were Citizens Council members. I asked Negro groups about him, and they had

no specific information about him. He was a first appointment. He was an important appointment, was the choice of the Senator Eastland who was Chairman of the Judiciary Committee. We were concerned about him; we discussed him a good bit in the Department of Justice; Byron White, the Attorney General, and I did. We couldn't... He was rated "exceptionally well qualified" by the American Bar Association committee. He was uniformly highly praised by every lawyer in Mississippi, and we just simply could not come up with anything against him. The Attorney General asked him up and talked to him in his office about the problem of Negro rights.

LEWIS: Were you present?

MARSHALL: I was not present. The Attorney General has repeated what happened in that meeting several times since to me and in my presence to other people. He sat down and Judge Cox, future Judge Cox sat down. They looked each other in the eye, and the Attorney General asked him if he was willing to decide racial cases in accordance with the mandate of the Constitution, and to give effect to Negro rights. And Judge Cox said yes. Their conversation, which wasn't recorded in any way...

LEWIS: It wouldn't really matter if it had been.

MARSHALL: No. But he gave assurances to the Attorney General on this matter, and it was decided and was discussed with the President that there was no real basis for turning down that recommendation by Senator Eastland.

LEWIS: What were you nervous about? What made you.... Just on the mere fact that he came from Mississippi and was recommended by Senator Eastland?

MARSHALL: Yes, that's right.

LEWIS: I remember that we had a story by Dave Halberstam [David Halberstam] in the *New York Times* which was quite critical of

[-89-]

the appointment, said civil rights groups were worried. It was an editorial story that placed in the mouths of unnamed informants the view of the writer. And I don't remember whether we had something specific or not, but there was apparently some reason for concern, maybe just the Eastland sponsorship.

MARSHALL: The NAACP opposed the appointment in the committee. I mean it was public opposition as well as private opposition, but their testimony was limited to this fact: it wasn't anything Cox had done...

[BEGIN TAPE 2]

LEWIS: The fact of Eastland's friendship?

MARSHALL: Yes, the fact that he was from Mississippi and was Senator Eastland's choice, Senator Eastland's personal lawyer had been affiliated with Senator Eastland in a law firm, and that Senator Eastland was opposed to Negro rights on the record in congress; had criticized the Supreme Court, and opposed the civil rights bills, and he's against Negro rights. That's true of every white politician in Mississippi. And it was that connection, that basis, that formed the opposition to Judge Cox. But it wasn't anything that Judge Cox had done, anything he had said, any organization that he had been affiliated with; it was just the situation that he was suggested by Senator Eastland, that he had been connected with Senator Eastland in law practice, and that he was from Mississippi. And so, I suppose the choice from the President's point of view was to not appoint anyone at all, and start out with that kind of fight, or to appoint—there was no specific basis for us to recommend against him, and we didn't. So the President followed on that. What he did was consistent with what he was advised to do by the Department of Justice, and I participated then, and Byron White did, and the Attorney General did. We all were worried about it but couldn't see any way out of it.

LEWIS: Could I just ask another further question just before you leave Cox. Do you think there is anything to the point that perhaps Nick Katzenbach was rather a man of more patience, more phlegmatic, more willing to just sit than Byron White was, and perhaps if Nick had been—I don't know about Judge Cox, but in general Nick might have been willing to wait longer, just say, make no appointment, than Byron was. After all the deputy does take the chief responsibility.

[-90-]

MARSHALL: The deputy does, but I don't know that.... To not appoint Judge Cox, you would have had to attack the entire system of judicial selection. Now, maybe the President, maybe he should have done that. I don't know. Nobody told him—nobody advised him to. The senators had just passed a bill creating sixty or so additional judgeships. They all had judges. You couldn't get any indication from any senator that they weren't all going to play their usual way that they did, that is, as far as they were concerned the appointments, judicial selections were going to be made by the senators, and the President would consent to it unless he had some reason not to. And with Judge Cox, who was exceptionally well qualified, which was only true I suppose three or four out of the appointments made, it was awfully, awfully difficult to think of any reason at all for the president not to consent. And as I say, he wasn't advised not to consent, he was advised to consent.

LEWIS: Well, let's go on to some of the others we mentioned then.

MARSHALL: Well, after Judge Cox, and after Judge Cox's behavior.



LEWIS: Did it become evident quite soon?

MARSHALL: It became evident quite soon that he was not going to—that he was going to resist any enforcement of Negro rights. I don't mean that he wasn't going to do his duty when he was compelled to do it, but that if he could find any way to avoid doing it, that he would avoid doing it. That's been true of his behavior in general, although maybe we've made some progress with him. But that's in general been true of his behavior. After that appointment we were even more concerned.

In Louisiana at the direction of the Attorney General and the President really, as I understood it, I went out of my way to get Robert Ainsworth [Robert A. Ainsworth, Jr.], who was a state senator, speaker of the state senate at the time, to agree to accept this judicial appointment. He was a lawyer that the senators *had* to accept and in fact *had* to recommend because of his political prestige in Louisiana. And in connection with the New Orleans school cases we had had a lot of conversations with him, I think at the suggestion of Frank Ellis and the suggestion of Russell Long [Russell B. Long]. And he had been very helpful in informing us at the time that the Louisiana legislature was passing all sorts of statutes on what they were doing and in doing what he could to resist that and to keep the state of Louisiana from turning into a comic opera, which is what they did turn into. So he had been helpful. He'd been helpful in connection with that contempt case against

[-91-]

Shelby Jackson [Shelby M. Jackson], and I went down and saw him once, he came up to Washington once. We used other friends of his to talk to him into accepting a position because the other alternatives for that time for that position appeared to be very difficult. He's been a fairly good judge.

As far as Gordon West is concerned, we got an approval on him. We discussed him with Skelly Wright [James Skelly Wright], discussed him with Harry Kelleher [Harry B. Kelleher] who was a lawyer in New Orleans that had been very helpful to us, and I suppose they were caught somewhat in the same position that we were caught with in Judge Cox. They didn't know anything against him, therefore they wouldn't say anything against him. We couldn't get anyone to say anything against him, and we just through ignorance...

LEWIS: Who recommended him? Ellender [Allen J. Ellender]?

MARSHALL: He was recommended by Senator Long.

LEWIS: Senator Long.

MARSHALL: And through ignorance, we had no idea really before he was appointed that he wouldn't be a perfectly good appointment. The case of Judge Gewin we relied—and you know by this time the Attorney General was awfully determined not to advise the President on any bad appointments on this issue—we relied on the advice of Judge Rives [Richard T. Rives].

LEWIS: Nobody could be more...

MARSHALL: And Judge Tuttle [Elbert P. Tuttle]. And Judge Tuttle frankly told us that he relied on the advice of Judge Rives. And that was it as far as Judge Gewin, who was also classified as exceptionally well qualified by the American Bar Association. But nevertheless, even with that he would not have been appointed without the approval of Judge Rives.

Judge Elliott again was an appointment that we were very concerned about because of his history. In that appointment we relied on the advice of Judge Tuttle, and Judge Tuttle relied on the advice of Judge Bootle [William A. Bootle]. Judge Bootle has been in the difficult positions on these cases. He's always done his duty and he's highly regarded by—I suppose the test would be at the NAACP and he is highly regarded by the people there. And the Attorney General, I think, would have advised President Kennedy not to appoint Elliott, but I remember the conversation. I was there when the Attorney General discussed

[-92-]

that with Judge Tuttle, and Judge Tuttle told us that he thought we could rely on what Judge Bootle had said and that Judge Elliott would do his duty. He incidentally was also supported by the leading Negro politician in Georgia, who is Colonel Walden [A.T. Walden], who called me I think at the instance of Bobby Troutman [Robert Troutman, Jr.], a friend of the President's in Georgia, to say that he was supporting Judge Elliott. But that would not have done it.

LEWIS: What were the bad things about Elliott that you say made you nervous about him?

MARSHALL: He had supported a white primary system in 1950 in Georgia. He was floor leader under, I think, Governor Griffin [Marvin Griffin] at that time. It was a racial issue and he had supported the racist view on it, and of course he was a political figure at the time. So that was opposed to—I mean that was on the record, it was at least on the record. So that was the reason with Judge Elliott.

LEWIS: Does this all add up to an analysis something like that President Kennedy felt about the prospects for civil rights legislation before the spring of 1963, and that is that perhaps a Republican president without the same kind of relationships to the Democratic senators from Georgia, Mississippi, Louisiana, Alabama would be freer to appoint people of guaranteed sound views on civil rights?

MARSHALL: Well, he—much freer. I think that, actually, when the Republican appointments were made that it made so much difference. It wasn't so much an issue because the Department of Justice wasn't doing anything about civil rights.

LEWIS: Really a lucky accident.

MARSHALL: It was an accident certainly with Judge Tuttle and Judge Wisdom [John M. Wisdom]...

LEWIS: Judge Rives possibly. Rives was long ago but....

MARSHALL: But Judge Wisdom and Judge Tuttle. Frank Johnson [Frank M. Johnson, Jr.] in Montgomery, he had been the U.S. attorney in Birmingham before he was appointed. He was Republican, he was from one of the counties in Alabama that refused to secede from the union in the Civil War. His father had run against Senator Black, Justice Black back in the thirties. I just don't think it was in the minds of the senators when they made their recommendations in those days, and it wasn't as much an issue. But it was an issue with Judge Cox, and looking back at it I think that was a mistake. But that mistake was at least

[-93-]

a knowing mistake in that we knew the facts, or the facts that there were to know, and did it anyway because of the system. In the case of Judge Elliott and Judge West and Judge Gewin, the mistake was—in a way it was a mistake of relying on advice that I still think we put a great deal of reliance in. So that was a different kind of mistake. This issue is up now, it will be up for President Johnson [Lyndon B. Johnson], and if it can be resolved it will be interesting to see how it is resolved with appointment to the Fifth Circuit now. [Interruption]

[END OF INTERVIEW #4]

[-94-]

Burke Marshall Oral History Transcript – JFK #4  
Name Index

**A**

Ainsworth, Robert A., Jr., 91

**B**

Barnett, Ross R., 73, 74, 75, 76, 77, 78, 79, 80, 83,  
84

Bell, Griffin B., 88

Bennett, Jeff, 87

Black, Hugo L., 72, 73, 93

Bootle, William A., 92, 93

Brewster, Leo, 88

Brownell, Herbert, Jr., 87

Butzner, John D., Jr., 88

**C**

Cameron, Benjamin F., 73

Cox, Archibald, 84

Cox, William Harold, 87, 88, 89, 90, 91, 92, 93

**D**

Doar, John M., 79

Dolan, Joseph F., 79, 80

**E**

Eastland, James O., 89, 90

Eisenhower, Dwight D., 78, 86, 87, 88

Ellender, Allen J., 92

Elliott, J. Robert, 87, 92, 93, 94

Ellis, Frank B., 88, 91

**F**

Faubus, Orval E., 78

**G**

Gewin, Walter P., 88, 92, 94

Griffin, Marvin, 93

Griswold, Erwin N., 86

Guthman, Edwin O., 79, 80

**H**

Halberstam, David, 89

**J**

Jackson, Shelby M., 91

Johnson, Frank M., Jr., 93

Johnson, Lyndon B., 94

Johnson, Paul B., Jr., 74, 75

**K**

Katzenbach, Nicholas deB., 77, 78, 80, 82, 90

Kelleher, Harry B., 92

Kennedy, Jacqueline Bouvier, 74

Kennedy, John F., 72, 73, 74, 75, 76, 77, 78, 79,  
80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91,  
92, 93

Kennedy, Robert F., 72, 73, 74, 75, 76, 77, 78, 82,  
84, 86, 88, 89, 90, 91, 92

King, Martin Luther, Jr., 84

**L**

Lamar, Lucius Quintus Cincinnatus, 79

Lincoln, Evelyn N., 74

Long, Russell B., 91, 92

Lucy, Autherine J., 86, 87

**M**

Markham, Dean F., 80

McNamara, Robert S., 80

McRae, William A., Jr., 88

McShane, James J.P., 75, 85

Meredith, James Howard, 72, 73, 75, 76, 77, 78,  
79, 81, 82, 83

Michie, Thomas J., 88

**O**

Oberdorfer, Louis F., 77, 78

**P**

Preyer, Lunsford Richardson, 88

**R**

Reis, Harold F., 78

Rives, Richard T., 92, 93

Rose, Frank, 87

Rostow, Eugene V., 86

## **S**

Schlei, Nibert A., 78

Simpson, Bryan, 88

## **T**

Troutman, Robert, Jr., 93

Tuttle, Elbert P., 92, 93

## **V**

Vance, Cyrus R., 80, 81

## **W**

Walden, A.T., 93

Wallace, George C., 87

Watkins, Tom, 74, 75, 75, 77, 80

West, Elmer Gordon, 87, 91, 94

White, Byron R., 84, 85, 89, 90

Wisdom, John M., 93

Wright, James Skelly, 92