

Cuban Prisoners Exchange Panel Oral History Interview—6/2/1964
Administrative Information

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Biographical Note

The interviewees secured the release of the Bay of Pigs prisoners from Cuba in December 1962 in exchange for donations of medical supplies, food, and other items to the Cuban government. This interview was completed with the following panel members: John B. Jones, First Assistant Attorney General of the Tax Division of the Department of Justice, Louis F. Oberdorfer, Assistant Attorney General of the Tax Division of the Department of Justice (1961-1965), and Mitchell Rogovin, Assistant to the Commissioner of the Internal Revenue Service (1961-1964). They discussed feasibility of the Cuban prisoners exchange, negotiations with U.S. corporations over whether or not the goods they donated would be tax exempt, the Red Cross's involvement, and the problems with fulfilling Cuba's ransom demands, among other issues.

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Cuban Prisoners Exchange Panel

Table of Contents

<u>Page</u>	<u>Topic</u>
1	Tractors for Freedom Committee
3	Panel members' November 30, 1962 meeting with Robert F. Kennedy (RFK)
4	Cuban prisoners exchange's feasibility
7	Problems with charitable deductions of companies' contributions to ransom payment
10	Prescription drug industry's meetings with RFK: December 1962
12	Red Cross's involvement in the exchange
14	Drug industry's concerns over drug contributions
15	First Assistant Attorney General John B. Jones' responsibilities
16	Fulfilling Cuba's ransom demands
17	Milk contribution problems
20	John F. Kennedy's Orange Bowl speech: 29 December 1962
23	Success of the operation

Cuban Prisoners Exchange Panel

Oral History Interview

with

John B. Jones
First Assistant General Attorney, Tax Division

Louis F. Oberdorfer
Assistant Attorney General, Tax Division

Mitchell Rogovin
Assistant to the Commissioner, Internal Revenue Service

June 2, 1964
Washington D.C.

By Francis J. Hunt DeRosa

For the John F. Kennedy Library

ROGOVIN: I became involved in the Bay of Pigs prisoners project when the Tractors for Freedom Committee was first organized. At that time Commissioner Caplin [Mortimer M. Caplin] had asked if I could meet with

[-1-]

representatives of that group to help draft an instrument of incorporation as a nonprofit organization. The main purpose was to set up an organization to receive contributions to be used to purchase tractors. Castro [Fidel Castro] in turn had promised to turn the prisoners loose for the \$17,000,000 worth of tractors.

DEROSA: Was there any indication the President [John F. Kennedy] was interested at that time?

ROGOVIN: I had every reason to believe from the newspapers and Commissioner Caplin that the Committee was formed in the White House or with White House blessing. After the initial meeting, the question of the charter came up. I sat down with Mr. Joseph Rauh [Joseph Louis Rauh, Jr.] of Americans for Democratic Action and hammered out a charter to give this organization tax-exempt status. It later became a bone of contention when the activities of the Tractors for Freedom Committee became public. However, extensive research into the laws of charity supported such an interpretation of the Internal Revenue Code. We even found support in old Hebrew law to the effect that seeking the release of those imprisoned was the highest order of charity. We were satisfied this was a charitable activity and were prepared to so rule. However, the whole issue soon became highly political, and as time went on the Tractors for Freedom Committee itself began to come apart at the seams.

DEROSA: Do you remember who at the White House was liaison?

[-2-]

ROGOVIN: Mr. Myer Feldman, Deputy Special Counsel to the President. Mr. Robert Hurwitch [Robert A. Hurwitch], State Department, was also in touch with the White House regarding the desirability of issuing a ruling. They were in favor of such a ruling. The organization itself, however, became unglued. Messers. Eisenhower [Milton S. Eisenhower] and Dodge [Joseph M. Dodge] separated from the Committee. Therefore, the ruling was never issued. The whole question then became a closed matter until sometime after the Cuban Missile Crisis, when I received a call indicating a picking up of interest in the desirability of forming an organization to redeem the prisoners. That was sometime in November 1962. This led to a meeting in Deputy Attorney General Katzenbach's office on November 30, 1962. Stanley S. Surrey, Assistant Secretary of the Treasury for Taxation, and I were there from Treasury and also Lou Oberdorfer and Nick Katzenbach [Nicholas deB. Katzenbach] from Justice. Mike Miskovsky [Milan "Mike" Miskovsky] was there from C.I.A. At that point, we were told by Nick that we were to explore the feasibility of formation of a charitable organization that would receive contributions in kind, mainly in the area of drugs and foodstuff, to be used to ransom the prisoners. The initial problem was not so much whether a charitable organization could be established. We had gone through that a year before. It didn't create a problem.

DEROSA: Was a tax-exempt organization involved at that time?

[-3-]

ROGOVIN: Yes, the Cuban Families Committee for the Liberation of Prisoners of War, Inc. had been formed, applied, and received exemption earlier in the

year. There was no stir at the time exemption was granted. We followed through on the original research. The organization had the specific purpose of redeeming the prisoners.

MISKOVSKY: The question came up of contributing goods and getting a tax deduction as incentive. As a matter of interest, I had talked to you a few times in terms of how much it would cost a company to actually make a donation of goods. You had studied this and we had discussed it without coming to any firm conclusion.

ROGOVIN: At this meeting, it was acknowledged that in dealing with the drug industry we were dealing with an industry with a relatively high markup. On that basis, the initial impression was one that contributions were feasible. What we were concerned with was how we would purchase necessary goods that were not contributed. Later, however, it was agreed that where contributions created a windfall profit, the corporation would in fact put into the charitable organization the amount of their profit in cash to then be used to purchase those items not obtainable through donations. It was a feasible program—on paper—but later discarded as demonstrating too heightened a sense of cleverness.

After the 30 November meeting the project was left with us. We were to work with Mr. Oberdorfer over the

[-4-]

weekend and then report to the Attorney General [Robert F. Kennedy]. The main consideration was whether the project was feasible. The project, however, raised more and more problems. It was apparent that they could only be solved when actually faced. It was decided to go ahead and work the problems out as they came up. We had come to a tentative conclusion that something could be done but recognized there were many problems connected with this. The only thing to do was to go ahead.

It reached a point where we knew it was feasible. This was the only question asked of us. Extensive planning was almost superfluous at that point. It was reported feasible from Revenue's point of view. A memorandum was prepared and Mr. Oberdorfer discussed it with the Attorney General.

OBERDORFER: The thing that I remember is that on that Sunday, December 1, a group of us met late in the evening at Stanley Surrey's house. The Commissioner, Mr. Rogovin, Mr. Surrey, and I were there. We had, I believe, prior to the meeting, seen the draft. Mr. Rogovin brought it by my house. We discussed it there, and then Rogovin came back to my office with me.

Sunday night we made some minor changes, and then I did a covering memorandum, which more or less stated

[-5-]

what conclusions had been reached. This memo also included comments by Lloyd Cutler [Lloyd N. Cutler] about the analytical and political problems which the drug industry felt it had. On Friday, 30 November, or Saturday night, 1 December, I had a meeting with Lloyd Cutler at my house. I had previously told the Deputy Attorney General that I was going to see Lloyd and had been cleared to speak to him. As Mr. Rogovin stated, we were taking a different approach to this project from what a lawyer would normally take to advise a client about a transaction.

As far as the “price” was concerned, I left with the impression, and the memorandum reflected this, that there was a substantial markup and that costs were to be the market value of \$35,000,000. It was reasonable to assume abstractly on the basis of early experience in attempting to raise this material that it would actually cost about \$17,000,000.

What Mr. Rogovin said was important. Lawyers are trained to work in detail, and yet it was demanded of us that we make recommendations and decisions on a basis that no lawyer would even consider and also take a risk that usually no lawyer would take. We were able to do this because we felt that among other things, as of that moment, all we could do was try. As of this point, that was the attitude.

[-6 -]

ROGOVIN: One thing that marked the whole project, as far as Treasury was concerned, was that we had to rule in an even-handed fashion—right in line with existing law. We couldn’t waver. We could not be accused of administering revenue laws in an uneven fashion. We could not put expedition ahead of administration. If we were to dangle the tax carrot, we would undoubtedly have gotten the response we hoped for. We would have gotten the prisoners out, but at a price that would have prostituted the Internal Revenue Service. It was clear that we just couldn’t allow expedition—the needs of the moment—to overcome good administration of the tax laws.

In the early days, our main concern was to keep the government’s activity behind the scene so that Castro would not up his ante knowing the government was behind it. Also, no one had ascertained the political climate.

JONES: One good example of not being overly expedient concerns the transportation companies. Insofar as transportation was concerned, it was recognized that it was not possible to give the transportation companies the same favorable ruling given the drug industry. Every time it came down to the fact that we could not give a ruling which would allow transportation to deduct the value of transportation services.

[-7 -]

ROGOVIN: This was true of a lot of people who contributed personal services. The various insurance companies were in the same position. They made contributions which were not deductible as charitable contributions. There were plenty of good arguments favoring the deductibility of personal services, but existing law had to be applied. This was extremely important. During the projects, hundreds of ruling

requests had come in. We reached the critical point—a test of our ruling integrity—when certain goods were desperately needed for the first shipment. Those working from the point of view of soliciting drug and foodstuffs really pressured us to move forward; rule and let these people make their deductible contributions. However, in many cases we couldn't give a favorable ruling. At one time, it looked critical, but in the end, the company contributed its products without benefit of a charitable deduction.

This was a very crucial time because we were just beginning to build up a stockpile. One point I want to emphasize is that there never had been any pressure from the White House or Justice to give a favorable ruling—only to get speed in ruling. Within myself, I felt pressure. On one hand to move out—“cooperate,” and on the other to be consistent—proper administration. While there was enough room to rule either way in this case, I was nervous about the manner in which the transaction was to be handled. After much soul searching, I refused to rule. We came out ahead, however, with our virtue and baby food intact. These both came in handy later.

[-8 -]

JONES: It was a situation which asked for a ruling that couldn't be permitted under existing laws. We took the situation apart and tried to think of another way the same goal could be accomplished.

ROGOVIN: We worked diligently with one milk company—Bordens. They found themselves in an economic bind regarding contributions. We worked with them for ten days before finally “signing them up.”

JONES: Without our consideration of alternative methods which might make it possible to contribute, there might not have been any contributions.

OBERDORFER: Due to the slight recession of that year the market had gone down early in the year. Business, however, had picked up toward the end of the year. A lot of companies found their gross income greater than anticipated. They had been geared to more pessimistic estimates, and this in a way was another benefit from the steel companies.

It was also possible donations would have been made to other companies.

ROGOVIN: Statistics had indicated that corporations were not giving up to full the five percent provided by law so that they were not necessarily displacing other charities by giving here. In many instances, they had their own private funds, which were separate so that charitable contributions were assured each year to local charities. This was recognized by the corporate executives as not being a real problem.

[-9 -]

Another thing I noticed on the part of the corporation executives was their desire that only first class products go over. At the very first meeting, it was made clear by the

Pharmaceutical Manufacturers Association that no one would give samples or outdated drugs or anything which would cast a shadow on the transaction as far as the government was concerned.

I have a couple of reactions to meetings where the Attorney General was present. The first one was with the Pharmaceutical Manufacturers Association people. They came up to the Attorney General's office as quite an impressive group of industrialists. They were there not under duress but they had to be shown. We went up—eighteen in all—to the Attorney General's office. He stood up in front of them and explained the various responsibilities the government felt. He stated he and the President felt responsible for the fact that the prisoners were held in Cuba after their effort to free Cuba. He described the project and our work. He then described the health condition of the prisoners. He was quite vivid and dramatic. I was visibly shaken by this description. I could see a transportation of ideas from him to this group. When they came out, they really felt, for the first time, the necessity for going forward with this program. As soon as these executives said, "go," then their tax counsels could see the way clear as to how it could be worked out.

[-10-]

Another meeting of consequence to me was the one attended with the Attorney General in New York with Proprietary Drug people. The Attorney General handled himself in the same fashion. At one point, the executive officer of this association stood up and wanted to thank him for coming and pointed out this was a very important meeting. He pointed out that this industry was very anxious to come "close" to the government and to communicate to Justice its problems and the problems it foresaw. The Attorney General, after hearing the man out, told him he was asking them in their individual capacity to join in a citizens project and as far as their problems were concerned, they would be assured a fair hearing with the Department, but that this was not the time or the place to discuss this fact of government-business relations. He restated that his sole purpose for being there was to tell them of the problems the prisoners were facing and efforts to bring about their release. I think standing up to the problem caused these executives to appreciate even more the sincerity of the Attorney General in presenting the problem to them. It would have been easy enough to mouth some cliché; dangle a tax-carrot before them to increase participation; and then worry about problems at a later date. It was a very impressive meeting because of the electricity in the air. The Attorney General's demeanor and his dynamic approach in selling the necessity for moving out and joining up with this project had a direct effect on his audience.

[-11-]

JONES: A typical approach of the whole operation was to aim for the top, usually the president of the corporation, get the line set, and other things would fall into place. Once in a while, we ran across a situation where we could not get through. The spirit the Attorney General put into the whole operation was as follows: "This man does not get the message; we will just have to go around him." Sometimes dealing

with somebody low you put your neck out and figured the success of the operation would save him.

ROGOVIN: Ingenuity was also important. Once while trying to reach the president of a large food company in the Midwest, it turned out that the man had a private line and there was no way of finding out the number. Through ingenuity, someone in the Department of Justice (the F.B.I.) was able to get the telephone number. When the president was reached at home and the lawyer spelled out the whole story, the president said, "Fine, our corporation is signed up. Just work out the details without lawyers." Then he said, "How did you get my phone number?" The lawyer replied, "The White House has it." I'm sure the president grew two feet at that point.

OBERDORFER: Two main reasons for turning to the Red Cross were: (1) some of the drug people said making contributions to the Red Cross might facilitate participation and, (2) it became apparent to us that a tremendous handling problem of warehousing

[-12-]

bill of lading documents, and transportation problems existed and the Cuban Families Committee didn't have facilities for this.

Our entrée to the Red Cross concerned a tax case. We were representing the Red Cross in a case in which it was being taxed by the State of Colorado. We had some contact with Elvis Starr, General Counsel, on account of that. This may have been the result of a suggestion that made us think that we had some access to them. It taught me about their responsibility to the government. They had disaster relief functions and were designed to help the government in times of disaster and they also had prisoners-of-war relief responsibilities.

The contact with the Red Cross was when the Deputy Attorney General came back in to this thing. When we went to go to Red Cross, we felt we ought to approach with the most rank and prestige available to us. Nick and I went over out of the blue and laid the proposition before John Wilson [John J. Wilson]. The proposition was merely a camel's nose under the tent kind of thing. We said it would be helpful if the Red Cross could lend its prestige to this project and become a donee with the Cuban Families Committee. We asked if they had warehouse and bookkeeping facilities for handling large quantities of food supplies.

JONES: This must have been mentioned very gently because when it came up later, it came as something of a surprise.

[-13-]

OBERDORFER: At this time we didn't dream we would ask them to take ultimate financial responsibility. We didn't have any conception of that. That came a week later.

JONES: We didn't have trouble in finding in that organization the type of men who would do this. Bob Shea, Vice President of the American Red Cross, gave everything. We only needed to suggest something to him.

OBERDORFER: Shea was exactly what the doctor ordered. I think Shea and Harriman [E. Roland Harriman] were the best of the Red Cross. I am frank to say that there was a good deal of rust in that machine which we had to purge. We did some fast turning around on people. I remember when we finally found that the stuff had to start moving. The drug companies prior to that were assured nothing would have to move from the warehouse until the President publicly stated that the project was in the public interest. On this particular Saturday afternoon, the President had not so stated. They came back. Everybody's general counsel had the idea that before they would move this material they wanted guarantees from the Red Cross that they would be harmless from any liability in any action. We came back from New York with the whole thing hanging on a thread of whether the Red Cross would make that commitment. Shea said that they had never done that before but "of course, we will."

[-14-]

A point to emphasize is that the *S.S. African Pilot* was already moving toward Baltimore to pick up the goods.

There were some people who had the spirit without basic training. Some got it after they had listened a while. Others were just untrainable. Bob Shea [Robert Shea] arrived full-grown; his disaster relief experience was invaluable. Another thing was his calmness.

JONES: My connection with the prisoner exchange arose in a tax context, as Mr. Oberdorfer's First Assistant. Mr. Oberdorfer found himself in a jam toward the end of the week of 1 December. In need of somebody who could help him on tax matters, he called me. My first duty was to go to a meeting with Mr. Rogovin, among others, on some of the details. Mr. Oberdorfer also asked me to make available to the project as much of my time as necessary, and it turned out to be all my time between 6 December and 24 December. In terms of staffing and division of responsibility, one assignment was to act as constant deputy executive of the program since my office was next to his. Whenever he wasn't there, I would man it and pull in inquiries and give answers and refer to other people. Also, I was given the job of liaison with the Red Cross and liaison with other government supply agencies. On about Friday, 5 or 6 December, I went to the Red Cross, working on a level with Bob Edson [Robert C. Edson], National

[-15-]

Director, Disaster Services, Red Cross, and Enso Bighinatti [Enso V. Bighinatti], Assistant National Director, Disaster Service. We met with them and went over how far we had gone and what our general needs were. At this conference, it became clear that logistical support would be very heavy. As indicated in early discussions, there was some resistance because I don't think the assignment to people down the line had made this clear. One job was to keep

them informed of the major decisions as they were being made and to fill them in on answers to specific problems that arose. In this early stage the amount of \$53,000,000 looked large indeed and also the particular requirement to get it in Cuba by December 24. The natural thought was we might have to go to large stockpiles immediately available. Two particular stockpiles came to mind. The Department of Defense ought to have available materials that would be useful and also the Department of Agriculture. It was decided that while we didn't know we would be calling on these supplies, it would be necessary to know what was available. On Sunday, December 8, we called a meeting to bring together people from the government departments of Defense and Agriculture to tell them what we were doing. We were not for the minute concerned about the legal means or desire of the government to use it. We had cooperation and were advised what they would have available, where it would be available, and how feasible

[-16-]

it was to get it to Cuba. Within a few days, we had a list of supplies which would meet the Cuban request which could be given by the Army and transported to Cuba if necessary. From the Department of Defense, we were advised what requirements were reasonable and in all respects, the report was favorable that these were not goods likely to be exported. All were needed by the Cubans. Agriculture discussed what surplus stocks they had, suggesting substitutes that might meet the Cuban requirements. A major problem from the start was the list included about \$10,000,000 of milk, and our early researches into available contributions and milk companies indicated the milk industry itself would be unlikely to come up with more than \$1,000,000 worth. A million dollar contribution of milk would not benefit the companies as much as high mark-up items. We also had problems in that the baby food on the list provided by the Cuban government totaled between \$14,000,000 and \$15,000,000 and the manufacturers weren't able to provide more than \$3,000,000. It was apparent we would have to come up with a substantial amount of milk. Our only source was government surplus in the form of powdered skim milk purchased at 18 cents a pound. On the world market, it only costs about 6 cents a pound. If we could get an agreement from the Cubans to accept at U.S. domestic prices, we would have had considerable leverage by using the milk. At the time, it was certainly possible that the Families Committee could buy milk

[-17-]

or that funds would be available from excess contributions. The Cuban Red Cross, when we established communications with them, didn't like the designation of the skim milk nonfat dried. At an early stage, we got a sample over to the Cuban authorities.

We did not, however, have available funds or any means to purchase this milk. We checked into the law, and there was a section of the code which would permit the Agency for International Development [A.I.D.] to make surplus commodities available to friendly peoples. Experts looked it over and decided there was ground for using it but it involved unnecessary intervention of a new agency, A.I.D. It was decided to forego these provision in favor of the provision of Section 1431 of Title 7. On December 15, armed with an opinion of

the Office of Legal Counsel, the Secretary of Agriculture granted the request and gave up to 50,000,000 pounds.

DEROSA: Was there any discussion between Secretary Freeman [Orville L. Freeman] and the White House?

JONES: Yes, on 15 December. We got up the letters and went to Freeman's house to get his signature. They received the approval of the general counsel, but Freeman did not want Commodity Credit Corporation milk to go before specifically approved by the President. We got in touch with the Attorney General and told him of this. Sometime that evening he called back. He was able to discuss the matter with the President frankly. Under the exigencies

[-18-]

of the existing situation, it would be necessary to go ahead on the basis of the letters of December 15 with the hope that some method of payment or reimbursement could be worked out. He had no hesitation, and it was thus put forward in the program. This was in the face of an expression of policy which Congress had declared that subsidized products were not to be made available to any nations other than friendly nations. The argument here and embodied in the written opinion was that this was not being made available to another nation but to the people of a nation through the Cuban Red Cross—not a government-to-government arrangement. The particular situation here could not have been foreseen by the Congress. In an exchange of letters, it was indicated that the Cuban Families Committee would pay the 6 cents per pound and would have it credited on invoices at 18 cents per pound. As it turned out, in view of the additional cash requirement of Castro and the lack of success in raising the funds, the Cuban Families Committee never did get enough money to pay for the milk. We finally used at a later stage vegetable oil which was substituted for the following reasons: (1) the Cubans had enough milk, (2) space became tight, and (3) one of the items which was contributed and delivered to the Red Cross for use was some \$2,000,000 worth of insecticides. The Department of Commerce felt this could be considered as augmenting the Cuban

[-19-]

economy. They didn't want to make special rules applicable in this case. Therefore, we could not send that insecticide. This matter carried over into January. Early in January it was suggested to the government, they might be able to make use of this insecticide. Nothing very much was done about this suggestion for a while. Later we convened the necessary people at A.I.D. and talked about this and set tight time deadlines. We were able to discover that both India and Pakistan had a strong need for this insecticide and could use it and would pay for transportation. The project then received \$2,000,000 credit so to say. This extra \$2,000,000 was treated as repayment to the Department of Agriculture for the milk which they had made available earlier in the program. It was established to the satisfaction of

everybody concerned that the Families Committee had fulfilled the commitment to pay for surplus supplies. The matter was closed on that basis.

One other thing I might comment on is that after the prisoners had been brought back, sometime in the week before Christmas and New Years, there was an announcement in Washington that the President would address the Brigade at the Orange Bowl in Miami. On the part of the people who worked on the project, there was a great desire to be present at that time. Most of us had not seen any of the prisoners or had any direct contact with the fruit

[-20-]

of the labors. I had the feeling it was a very great thing and that it seemed even more important to some of us who had worked on it. One the night before, a special meeting was called about 9:30. He explained the plane would be available for those who worked on it, and Mr. Oberdorfer and I tried to work out a list of those people who would most properly fit in the plane. By the time we were through, we were getting some people out of bed. I do think it was interesting that nobody we reached said they didn't want to go. We gathered at the private terminal at National Airport at 5:00 a.m. Some people had only three or four hours notice. Nobody missed the plane. It turned out to be a Convair, which was somewhat slower than we wished, and we ran into heavy headwinds on the way and had an excellent time rehashing experiences. It became apparent that we weren't going to be there at the start of the meeting. There was considerable anxiety as to whether we would catch the President's speech. With the typical sense of improvisation, and I am sure through the cooperation of Don Coppock, it was arranged to have a fleet of Immigration patrol cars meet us with a motorcycle escort. Even so, we arrived just in time to hear part of the President's speech. We were escorted to a special section. It was very exciting—an emotional experience—being there and seeing the President respond to the enthusiasm of the crowd. Somebody got

[-21-]

him to stop his car at the corner of the stands where we were. He stopped and Lou Oberdorfer introduced him to many of the people in the operation and for a number of them, particularly people who are not normally political, this was a very unusual experience to meet the President. He was very gracious and unhurried.

I don't know if anyone else has mentioned this. An essential element of an operation of this scope is communication, at least in 1962, and communication means telephones. In a period from 1 to 24 December, some new telephone lines and eight or ten regular extensions were added. At some times you could find people talking on every line of the telephone. We felt that from December 5 on somebody had to man the phones day and night. Somebody was assigned. I don't recall anyone who had a night without three or four calls. Some didn't have a free minute. There was great freedom of access to the rooms of the people dealing with the program.

I remember one time the Deputy Attorney General and I drew the assignment to man the phones. We had to flip a coin to see who would get Lou's couch and who would get the reception room couch. That was the night we got a call from Mr. Oberdorfer in Miami and had to call Mr. Nolan [John E. Nolan] back in Havana.

If asked for a personal comment on the overall operation, I would have to classify myself with some of those who

[-22-]

warmed up as it went along. I think at one point, perhaps it was early in the operation, I had a meeting with someone who asked whether it was right for the United States to ransom the prisoners. I felt I didn't know whether it was right or wrong, but would rather make the mistake of getting them out and being wrong than leaving them in and being wrong. I was surprised to find out how uniform the agreement was here. I really don't think the operation could have been carried out if it had not been December and the Christmas season. The matter of time was so relevant that we couldn't engage in normal procedures.

[END OF INTERVIEW]

[-23-]

Cuban Prisoners Exchange Panel Oral History Transcript
Name Index

B

Bighinatti, Enso V., 16

C

Caplin, Mortimer M., 1, 2, 5

Castro, Fidel, 2, 7, 19

Coppock, Don, 21

Cutler, Lloyd N., 6

D

Dodge, Joseph M., 3

E

Edson, Robert C., 15

Eisenhower, Milton S., 3

F

Feldman, Myer, 3

Freeman, Orville L., 18

H

Harriman, E. Roland, 14

Hurwitch, Robert A., 3

K

Katzenbach, Nicholas deB., 3, 6, 13, 22

Kennedy, John F., 2, 3, 10, 14, 18, 20, 21, 22

Kennedy, Robert F., 5, 10, 11, 12, 18

M

Miskovsky, Milan "Mike", 3

N

Nolan, John E., 22

R

Rauh, Joseph Louis, Jr., 2

S

Shea, Robert, 14, 15

Starr, Elvis, 13

Surrey, Stanley S., 3, 5

W

Wilson, John J., 13