

Nicholas Katzenbach Oral History Interview – JFK #1, 11/16/1964
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Biographical Note

Katzenbach was the Assistant Attorney General (1961-1962), Deputy Attorney General (1962-1964), and Attorney General of the United States (1964-1966). In this interview Katzenbach discusses his first meetings with John and Robert F. Kennedy, the Freedom Riders, civil rights, aid to parochial schools, and appointments to the Supreme Court, among other issues.

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Nicholas Katzenbach
JFK #1

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Oral History Interview

with

NICHOLAS KATZENBACH

November 16, 1964
Washington, D.C.

By Tony Lewis

For the John F. Kennedy Library

LEWIS: This is Tony Lewis recording Nick Katzenbach on November 16, 1964, for the Kennedy Library. Nick, describe the first time that you met Bob Kennedy [Robert F. Kennedy], the circumstances.

KATZENBACH: Well, the first time that I met him was in the period between the election of President Kennedy [John F. Kennedy] and the Inauguration. I think it probably was just before New Year's. I had been talking to Byron White about the possibility of coming with the Department of Justice, and then he said he thought I ought to meet Bob Kennedy. So I went up into the suite of offices

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in the Justice Department that was then occupied by Mr. Kennedy and Mr. White, which was part of the Civil Division offices, I believe, and met him then.

LEWIS: How was it? What was your reaction?

KATZENBACH: Well, I didn't have very much of a reaction. He kept calling me Professor Katzenbach, and I...

LEWIS: Did that have any edge to it?

KATZENBACH: Oh, a little bit of an edge. He asked me a little bit about myself – not very much – and said Byron had spoken highly of me, that I was being considered for the job of Assistant Attorney General in charge of the Office of Legal Counsel but there were other people being considered. It really wasn't much of an interview. It didn't last very long.

LEWIS: When did you first form an impression of Attorney General Kennedy?

KATZENBACH: I think before I went there. I formed an

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impression in a rather odd way when I was in Europe before the election, and, in a way, I formed a more favorable impression about him than I really did about President Kennedy.

LEWIS: Why was that?

KATZENBACH: This was because I had a terribly strong feeling that the problem with the United States in Europe at that time was the loss of confidence on the part of Europeans in the capacity of the Americans to do things efficiently and better and bigger, in sort of a World War II idea that we can build more planes and do more things. And this, I thought, had gone very much in the Eisenhower [Dwight D. Eisenhower] period. And, while I liked much of what President Kennedy was saying, I rather liked the picture that he was painted – not always favorably – by the American news media about Bobby as being the fellow who wasn't going to be beaten or licked or put down

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by anything. And I thought the concept of efficiency, which is the major way in which the news media painted his running of the campaign, as one with walkie-talkies and this and that and the other thing – simply getting it done and getting it done well – was a picture that the United States needed very much abroad, needed more than it did idealism and so forth.

LEWIS: That's not hindsight, in view of your experience with Attorney General Kennedy?

KATZENBACH: No, this, in fact, I ...

LEWIS: I'm amazed that you could have gotten that impression of him from the newspapers, which weren't very accurate.

KATZENBACH: Well, the newspapers may or may not have been accurate. This is

certainly the picture that was painted. I can remember the statement made by his father [Joseph P. Kennedy] at this time about Bobby – that he was, more than anybody else, the guy who wasn't going to

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be licked or something, that he had this kind of determination. In fact, I felt more that way about him before I knew him than I did afterwards.

LEWIS: When did you begin to form an impression of him firsthand? Was it the Freedom Riders, possibly. What was the first real...

KATZENBACH: No, we worked on a lot of things before then. There were a number of things that we did in the Office of Legal Counsel, beginning right from the outset, some of them not particularly important, I suppose – questions as to whether or not you could remove the head of the Federal Power Commission or not, something which we negotiated to a fairly satisfactory conclusion. I had said that you could, and they had threatened to take it to court.

LEWIS: Who's they? Mr. Kuykendall [Jerome K. Kuykendall]?

KATZENBACH: Mr. Kuykendall.

LEWIS: He had read *Humphrey's Executor* or...

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KATZENBACH: I don't know what he had read, but he had another year to go and he settled for two months, which I thought was a fairly good settlement from the President's viewpoint.

LEWIS: Yes. Now, we're going to turn to what is the real topic here. What part did President Kennedy play in that, for example?

KATZENBACH: Well....

LEWIS: How did you get into that?

KATZENBACH: Well, we got into it even before we were asked to get into it because there was a *Wall Street Journal* story that said that we were thinking of removing him, which I didn't know that we had been, but when I read it I thought we ought to find out whether we could or not. Because, by and large, I thought it was a good idea, that we should if we could. And then we looked it up, and it seemed rather a close question until we kept looking at it, and it seemed more and more to the effect that President Kennedy could.

Then as it actually resolved

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itself, at the last part of it, we were ready to really test it. Mr. Swidley [Joseph C. Swidley] was ready to really test it, and he said he wasn't going to take two months, Kuykendall could get out in thirty days. We had this approach though, as I recollect, Oren Harris, that Kuykendall was willing to get out in sixty days if we would give him that long.

And at that point, Mr. Swidley said, no, that was too long. And I was in Ralph Dungan's office talking about it with Swidley, and then I knew that it was going to go to the President. I knew that the Attorney General was in with the President at that particular moment. I didn't know Ralph Dungan very well, and I wasn't sure of what Ralph Dungan was going to say about this. So I sent a note in to the Attorney General that I had to see him, and I got a note back saying "Come on in."

And I went in, and I said, "If the issue

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of Kuykendall arises, he'll settle at sixty days, and I would take it." And the President said, "So would I," at which point Ralph Dungan appeared at the other door of the President's office and said exactly the same thing that I had said. He said, "Swidley wants to contest this and I would take that offer." I think that was the first thing that brought me rather close of Ralph Dungan, that without knowing each other, we had arrived at the same conclusion.

LEWIS: That's an illuminating episode. Was that the first time you had actually met President Kennedy?

KATZENBACH: No, the first time I met him was when...

LEWIS: That would have been – just to place it in time – that would have been in...

KATZENBACH: March.

LEWIS: ...March of 1961.

KATZENBACH: No, the first time I met him was when some members of the Cabinet were sworn in,

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including the Attorney General, at an affair at the White House just after the Inauguration. And I went through the receiving line, and I recall the President saying to me, "Oh, you're with Bobby. I'm very happy that you are with Bobby," Which I thought was a remarkable feat of memory, that he would remember who was with Bobby.

LEWIS: And that was the only time before this Swidley episode – Kuykendall episode – that you saw the President?

KATZENBACH: The only time I can remember, yes.

LEWIS: That would have been March. I don't recall whether you were intimately involved in the Freedom Rider-Montgomery-Byron White crisis there, were you?

KATZENBACH: Oh, yes, I was involved in that, involved in the discussions about that before we went down there. We met in Byron White's office. The thing I remember most vividly about that was the issue one night as to whether we ought to send all these people down there and

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finally Bobby saying, "No, not yet." And Byron White was terribly upset about this because he felt the timing on it was wrong and that we should have sent people down before we actually did. And he had presented quite objectively both sides of the issue to Bobby, and Bobby had talked with his brother and then said, "Let's let it go." And Byron had felt that he was very wrong, to let it go any further. But we did, we did for almost another forty-eight hours before we began to send people down there. I'd been involved mostly on the legal questions as to whether we had authority to send people down there or not and had concluded that we probably did.

LEWIS: When did you form your first impression – and tell us from what material, what periphery – of President Kennedy's general outlook on the racial question? I remember Burke Marshall saying in an interview for this same program that it became very clear to him very shortly after he took office, or even before he took office,

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that the Kennedys, the two of them, wanted to do something about improving the lot of the Negro in the country, that they thought the right to vote ought to be enforced and that the people should not be discriminated against because of their color. When did this really first come home to you, if you can come back to that?

KATZENBACH: Probably sometime after it came home to Burke. I would have had my doubts at the time of the Freedom Riders as to whether this was really what was intended or not.

LEWIS: As to whether the intention of the moves made over the Freedom Riders was an intention based on a sense of justice about race

relations?

KATZENBACH: Yes. I don't think there was any doubt as to the sense of justice about it, but there was some doubt as to the implementation of it, and understandably, I guess. But there was an awful lot of caution involved in the Freedom Riders initially, and I suppose also

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some lack of caution.

One recollection I have strongly was that, when the Attorney General was unable to get in touch with Governor Patterson [John M. Patterson] and to talk with him about this, he said, "Well, I'll get the President to call." And I said that he shouldn't do that because he might refuse to talk to the President also, and that would be really very bad, if the Governor refused to talk to the President. That offended my sense of propriety. But he did, and the President did try to call Governor Patterson, and Governor Patterson did refuse to talk to the President.

And then when there was an unwillingness initially to send marshals, I think I was fairly gung ho, about sending marshals down. I think Bobby was more cautious, and I think the President was more cautious about this. I think, in retrospect, they were probably right about this, but then

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I wondered whether real guts were behind us. I wondered that for probably about twenty-four hours. Then I was convinced that there were.

LEWIS: Well, you don't doubt, though, that as a matter of fact your instinct was not necessarily wrong, that they learned a lot. You don't have any question, do you, that their view of the attitude of people like Governor Patterson came under rather drastic change over a period of several years of dealing with the Governor Pattersons of this world.

KATZENBACH: No, I think it did, and I think it was rather better from the way in which they did it in the way – even despite the fact that this had its problems, particularly in Mississippi with Governor Barnett [Ross R. Barnett]. I think the basis for attempting to deal with this as a problem in which you made every effort to make the local people take care of the situation was right. I felt that Patterson was a pretty difficult person to deal with. In fact,

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I was surprised that he came out as well as he did. I think largely he came out that well because he had a rather good head of the Alabama Highway Patrol.

LEWIS: Floyd Mann?

KATZENBACH: Floyd Mann. I think, absent that, it would have been rather a tragedy at Montgomery. But the same idea carried through, and I think in retrospect it was right. I think I came even to believe, out of that experience, that this was the right way to do it. But Governor Patterson was not a man in whom anybody had any confidence at all, and I think I was probably prepared to write him off before the President and the Attorney General were.

LEWIS: How much difference did it make in the Attorney General's attitude and, therefore, in the President's attitude that John Seigenthaler was beaten up as he was beaten up?

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KATZENBACH: Oh, I think not very much really. I don't think that was important in terms of that decision. I think that it gave an aura of crisis about the affair that it might otherwise not have had, but I don't think that that in itself determined any decision that was made down there.

LEWIS: If you can distinguish these two things...

KATZENBACH: In fact, John Seigenthaler rather urged not to – I think – the reason marshals were not sent initially, when Byron White would have sent them and I would have sent them, was mainly because John Seigenthaler said, "No, not yet."

LEWIS: As a matter of fact, as it turned out, it was a bit like Custer, only with the people arriving on time, wasn't it? The marshals marched over the hill just as the mob was closing in.

KATZENBACH: Yes, but with the Highway Patrol right with them. I'm inclined to think it was that fact, more than any other one, that saved

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a riot. I think the marshals didn't of themselves.

LEWIS: That's interesting. And that made all the difference in, then, Oxford?

KATZENBACH: In Montgomery that made all the difference. In Oxford it was the opposite; it could have made all the difference.

LEWIS: That's what I meant. If the state police had made even a show of unity with you in Oxford, it would have dampened the....

KATZENBACH: It would have made all the difference. Twenty local Highway Patrolmen were worth two, three, or four hundred marshals.

LEWIS: Now, if you can differentiate these things in your mind – I'm still trying to get at your sense of President Kennedy's and Attorney General Kennedy's feelings on the racial issue. What you've talked about so far is really a sense of their strategic instinct of meeting their obligation, which is, I think, the same way that the Attorney General would have put it, always in terms

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of meeting the duty of the Attorney General. What I'm trying to ask you to isolate in your mind is when, psychologically, there entered into his attitude to these questions a basic feeling about the justice of equality, equal treatment, for the Negro. At what point did you feel this was a psychological factor, an underlying element in decisions?

KATZENBACH: Well, that really.... Well, from the outset, I never had any question about the Attorney General or the President in terms of the objectives in this regard. I think the objectives were hopefully put in terms of voting and doing something about voting and doing it in that way. The psychological block that both of them had come out of the campaign, which was understandable enough, which was that they weren't going to use troops in the South. Of course, this has been quite an issue in the campaign, and President Kennedy had fairly well undertaken not to use troops in a good deal of

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criticism of Little Rock and the way it was handled. And this had largely been, in the ways campaigns will go, in terms of the fact that troops had been used and troops weren't necessary. So, I think if they had a psychological – there was no question about what they intended so far as the Negroes were concerned (this came out of the campaign as well out of views), but I think there was a big question on the strategy. And I think there was a big question on the strategy. And I think the strategy was never to use troops, which was why I felt so badly at Ole Miss [University of Mississippi] when troops were used because this was the one thing they had rather determined never to do.

LEWIS: But you don't think there was some point – of course, it's not an identifiable single point – but you don't think there was an educational process that led to a much deeper awareness of the kind of inequality, the kind of enormous prejudice that the Negro

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child faced, the attitudes that were reflected in the President's speech after your episode at Tuscaloosa, that were so beautifully articulated there. You think those were present all the time and they didn't come during that period?

KATZENBACH: No, I think they grew during the period. I think it would be hard to put a time on them. I would think that it probably came after the University of Mississippi episode. I think up until then there had been the sort of an effort which ought to have been successful and might have been successful if it had been started earlier. And I don't mean this as a criticism of the Eisenhower Administration, but if you had – and it's still true today – if Negroes had been voting ten or twelve years before this, this kind of an incident would not have occurred.

LEWIS: Which kind of an incident?

KATZENBACH: The kind of an incident that occurred at

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Ole Miss, the kind of an incident that occurred in Montgomery, any of these problems, because you would have had some people speaking out in the South.

LEWIS: And you'd have had law enforcement officials sensitive to their view?

KATZENBACH: Much more, sure, if they had been voting and if they were voting, and it's still true today. That still is sort of the fundamental answer to it. I think initially the Attorney General had an idea that; let's concentrate on voting, let's get people voting, and maybe if we can get them voting fast enough we will not have these other problems. The first of the other problems that arose was at Montgomery. And then he said, "Whatever we do, let's not use troops," and so you used a lot of marshals. And this worked only for the reasons that I have described. And then at Ole Miss, "Let's not use troops, whatever else we do," and then eventually we did. This was a sort of a little bit of a

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loss of virginity in a way because after that it became easier to use troops if that's what had to be used.

LEWIS: You make troops a symbol, which it doubtless was, but let's focus on a particular thing. After the Freedom Rider episode generally in Alabama and particularly at Montgomery with the marshals, the Attorney General took what was regarded at the time – I believe, correctly – as a rather bold legal step (it wasn't troops, but it was a very strong legal step) calling on the ICC [Interstate Commerce Commission] to adopt what were very sweeping regulations of intrastate as well

as interstate bus and railroad terminals. He surely must have had the approval of the President for asking for such a very large order, and that must have reflected a certain attitude towards the possibilities of the law in the situation, a certain attitude of aggressiveness. Now, how did that develop?

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KATZENBACH: That developed out of going about thinking what we could do about the problems of the Freedom Riders really, as such, and what could be done about this. We did rather exhaustively look at all the ideas of what could be done about the Freedom Riders, and the idea of making this petition to the ICC was one that came from a lawyer in the Department of Justice who previously worked with some of the administrative agencies.

LEWIS: Who was that?

KATZENBACH: A fellow called Nate Siegel. And he came up with...

LEWIS: What office was he in?

KATZENBACH: In the office that was my office at the time, the Office of Legal Counsel. And he said that he thought that something might be done about this. And another lawyer there – when I say Nate Siegel, I'm really giving him more credit than he ought to have because the fellow who came up with it was a fellow called Bob Saloschin [Robert L. Saloschin],

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really, who had worked for the Federal Aviation Agency and who went to work on the ideas of what could be done administratively about this and came up with this notion. And I remember meeting all day with the General Counsel of the ICC and other members of the ICC...

LEWIS: Is that Bob Ginnane [Robert W. Ginnane]?

KATZENBACH: ...yes, and urging them that they could, on their own initiative, do something about this. And they doubted very much that they could do it and doubted very much the law on the subject, of which we tried to persuade them. And after this, this fellow Saloschin came up and said, "Well, the Attorney General, you know, can bring an action here if he wants to." And we looked at that and decided that it might be a fairly dramatic way of solving the Freedom Riders' viewpoint, the problems raised by that, which it was. It was a rather ingenious idea that he came up with. His name appears on the brief there, one of the few times that anybody in the

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Office of Legal Counsel appeared on a brief, largely because it was his idea and that was the way of giving him some credit for it.

But in terms of legal innovation, the using of marshals in terms of Freedom Riders was really a much greater legal innovation than the action with the ICC, because here we did get a court order eventually, and this was President Kennedy's idea.

LEWIS: How did that develop?

KATZENBACH: Well...

LEWIS: I mean, how did you become aware of his...

KATZENBACH: Well, we told him that we thought we could do it on a statutory basis, and he said, "Can't you get a court order?"

LEWIS: What statutory basis, just to take it one at a time?

KATZENBACH: Well, the statutory basis that we had was a provision in the Criminal Code that talks about protecting people traveling in interstate commerce and protecting them from violence

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and bombing and shooting and so forth when traveling in interstate commerce. And we had out of the Anniston bombing some basis for saying we need to put marshals on there to protect people from this, but this is a very bad precedent legally, because if you take the view that anytime you have an incident which endangers somebody's life that you have to provide federal protection, you have to have many more people involved in this than you can possibly afford.

But initially this was the idea that we had, and the President said, "Can't you get some sort of court order about this because I would feel much more comfortable if we were enforcing some sort of court order." And so we got a court order about this, at least temporarily on a temporary restraining order, and that was what we actually were enforcing when we sent the marshals in. And still in terms of trying to solve the Freedom Rider problem,

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and this was mostly in terms of trying to get the Freedom Riders out of there so that the situation could cool off, Bob Salaschin came up with the idea of an appeal to the Interstate Commerce Commission.

LEWIS: Let me bring you back to a non-civil rights subject – it just occurred to me that you might have had some intimation of President Kennedy's

views very early in the Administration – and that is the question of the Post Office program to inhibit the entry of so-called Communist propaganda, foreign political propaganda, and so forth, in which the President, as I recall, on your advice adopted an Executive order eliminating this program. Well, it may not have risen to the level of an Executive order. In any case, he dropped the program and Congress thereupon passed this Cunningham [Glen Cunningham] legislation and so forth. Did you ever have any contact with the President on that, or were you aware

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of his views, or...

KATZENBACH: Yes, this came up, and we discovered with respect to this that the Eisenhower Administration had appointed a committee of the National Security Council to go into this problem and that they had concluded unanimously that the program should be dropped because it had no significance at all in terms of national security. But they had never done anything about it, I think largely because the election was coming up. Again, I think that's understandable that you don't drop this kind of a program two or three months before the election and after the election, you probably don't do anything about it because you say, "Well, let's leave it up to the new Administration."

But they had actually passed on this and reviewed it rather thoroughly in this group. So that I raised this with the Attorney General, and he raised it in the office one day over the phone with his

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brother, who said, "Well, that's a good basis. Let's get rid of the program. I don't like it." And so we did it, really resting our case on what the Eisenhower Administration had recommended, and then got the Attorney General and Dillon [C. Douglas Dillon] and Rusk [Dean Rusk] to accept the findings of the subcommittee of the National Security Council and to make that recommendation to the President. And so it was done with not very lasting effects.

LEWIS: Well, it's still probably better today than it was...

KATZENBACH: Yes.

LEWIS: ...although the Justice Department is busy trying to moot every case that comes up.

KATZENBACH: Well, we did before.

LEWIS: I know.

KATZENBACH: We tried to moot every case, and it's probably wise to moot them now.
The

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reason we try to moot every case is rather simple: We don't like the program that exists today; I think it is conceivable that you could have circumstances where the amount of foreign propaganda coming in could be important, in a wartime situation; we simply are trying to avoid getting a precedent that makes that difficult or impossible. Thanks to Mr. Cunningham we probably will get caught at this one of these days.

LEWIS: I think Arthur Goldberg is probably equal to your ingenuity in trying to moot the cases.

KATZENBACH: He's always equal to my ingenuity.

LEWIS: Now, I don't know where we are in the time period here, but were you at all aware at the very beginning – in fact, probably the answer is no – were you at all aware in the very first few days of the Administration and indeed the two weeks prior to January 20th, 1961, of the situation at the

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University of Georgia and the conversations with Governor Vandiver [Samuel Ernest Vandiver]?

KATZENBACH: No.

LEWIS: You know nothing about that?

KATZENBACH: No.

LEWIS: When did you first have any personal conversation of any significance with the President?

KATZENBACH: About civil rights?

LEWIS: No, on any issue.

KATZENBACH: I think the first time was on a lot of problems with respect to things that Mrs. Kennedy [Jacqueline Bouvier Kennedy] wanted to do in the White House. And....

LEWIS: There were legal questions about this?

KATZENBACH: Yes, there were some legal questions. We tried to work out her White House Committee on the Arts and making it a museum and so forth. There were quite a few legal questions on this that came up, some that were as much political as legal, and that was who she

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was getting contributions from.

I think that the first long conversation that I had with the President was when somebody offered a large amount of money to refurbish the White House. We were about to bring an anti-trust case, and I advised Mrs. Kennedy that she couldn't accept a quarter of a million dollars from this person, and went over to a White House function not long thereafter, and the President was playing the part of a good husband because he singled me out and said, "Now, isn't there something we can do to help Jackie get her quarter of a million dollars somewhat later? Maybe you can wait until afterwards until it's all been done," and so forth. And I said, "Well, maybe sometime in the future we could do this, but it would be a bad idea to do it right now" because the case was likely to be settled, and if she took a quarter of a million dollars for the White House and the case was settled, this was not likely

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to reflect well on the administration of justice.

LEWIS: Was it in fact settled?

KATZENBACH: Well, it was in fact settled. The case was MCA [Music Corporation of America].

LEWIS: This was from Mr. . . .

KATZENBACH: Jules Stein.

LEWIS: Jules Stein. Jean vanden Heuvel's father.

KATZENBACH: Yes.

LEWIS: Well, it all seems to have turned out in a very friendly way, judging by the vanden Heuvels.

KATZENBACH: I'm not sure that she ever got the quarter of a million dollars he promised, but I hope she did. I don't know. As I said, after the case was all dismissed and done with, if she wanted to remind him of the fact that he had offered to help here, it would be perfectly all right, but not to do it before then.

LEWIS: No, do you have some other thought about when

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you actually first met the President? Why don't you go into that?

KATZENBACH: Well, one of the first things I did in the Office of Legal Counsel was to help the then Vice President Johnson [Lyndon B. Johnson] to work on the Executive order on Equal Employment Opportunity. I worked on that. The Attorney General asked me to go see him, and I did. And then I worked on that for some time to put out a comprehensive order. We finally had the thing drafted, and it was to come out, I recollect, on a Monday. We worked on it all day Saturday to get all the commas in the right place and so forth after we had corrected all the other problems and worked them out. About 6 o'clock in the evening I drove it out to the Attorney General's house so that he could sign the letter to the President recommending this Executive order. I went out to the Attorney General's house – it was the first time that I had been there – and....

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LEWIS: This was the winter of 1961?

KATZENBACH: This was, I would think, toward the end of February of 1961. I went into the house, and he said, "Well, come on in," and having dinner that evening with the President was...

LEWIS: The President was at the Attorney General's house?

KATZENBACH: The President was at the Attorney General's house, and Lem Billings [Kirk LeMoyne Billings] was there. And so I produced this Executive order in the presence of both of them, and I said to the Attorney General, I said, "You've got to sign this and give it to the President." And Bobby said, "Well, what is it?" And I told him what it was, and he said, "Well, what's it all about?"

And whereupon the President interrupted and said, "Did you get that Section, 305 I think it is, worked out with the Vice President? Is that satisfactory to him now?" And I said, yes, we'd worked it out. And he said, "Well, how about that question of the unions? Have you talked with Arthur Goldberg about that? Have you worked that out all right?" And I said, "Well, I think we've worked that out, yes, along those lines." And he

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went through three or four sections of this and obviously knew much more about it than the Attorney General.

And the Attorney General said, "Well, I don't know what the hell I sign this thing and give it to you. Why don't you sign it and give it to me?" And this was the first time that I was really impressed with this sense that the President had for detail and memory. And he

actually was naming the section numbers right, and if I hadn't spent two or three weeks on this and all that morning, I wouldn't have known the answers to these questions.

LEWIS: I'll throw in an anecdote at that point. It just reminds me – it's unimportant, but long before he was President, the first time I ever met him was at a dinner party put on by some former Nieman fellows in Washington when he was a Senator and was very much involved in the issue of labor reform. I can place it in time because the labor reform act eventually passed in 1959, and this was, I think it must have been before the election of 1958 because at that time the Kennedy effort to pass a labor reform bill had failed because of union

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opposition. And Senator Kennedy was very disturbed because he said that the people who were really anti-labor would benefit from this and that the unions would regret it. I remember his saying that John McClellan was the man who would benefit and he was a very dangerous man. That struck me at the time. It's an oddity considering their relationship.

But, here were a couple of the former Nieman fellows, like Clark Mollenhoff, who were exceedingly expert on the subject of labor law and began engaging in abstruse discussion of the amount of picketing, recognition picketing, various of these topics have taken, you know, ten Supreme Court opinions to elaborate, and Senator Kennedy was exactly like that and he'd say, Section 704(b) and Section 12(b)6 would so and so but you can't change that without affecting the whole situation under Section 12 so and so and so and so. Just the same way. It was very impressive, the first meeting, and it made a great impression on me.

KATZENBACH: It certainly impressed me at the time, and it wasn't simply knowing section numbers; he knew what was said, and he knew what the issue was. Each time

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that he raised it with me, I said, "Yes, we've worked that out. It's satisfactory." But each time I felt rather guilty in the presence of his younger brother that I hadn't explained all this to the younger brother who wasn't really embarrassed because just Lem Billings was there and the President and me, but otherwise it would have. I think maybe Red Fay [Paul B. Fay, Jr.] was there.

LEWIS: That didn't change the climate?

KATZENBACH: It didn't change the climate at all, but it really was rather funny because Bobby kept looking at me, sort of saying, why haven't you told me anything about these things, and....

LEWIS: Well, why? It wasn't really the Attorney General's responsibility in

the first place, was it?

KATZENBACH: It was an Executive order, and that was the Attorney General's responsibility.

LEWIS: In that sense. But substantively, it was not a Justice Department...

KATZENBACH: No, in fact, Vice President Johnson had rather taken this over after the sort of initial direction to get an Executive order done. I suppose this could go back to what you asked earlier, Tony, when did I

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first become aware of his feelings about civil rights. And I think it was probably obscured here by the fact that it was Vice President Johnson, because as soon as the President asked the Vice President to have an Executive order on this subject, the Vice President then, with all the feelings that he must have had about his own position with respect to civil rights, was determined to make this Executive order go absolutely as far as an Executive order could go. And the initial draft of that Executive order was done by Abe Fortas and...

LEWIS: Why? How? That's very interesting. I'd like to hear about that.

KATZENBACH: Well, it was done by Abe Fortas because he was probably the closest legal advisor the Vice President had.

LEWIS: In other words, actually, this was something that really was done, the donkey work was done, by the Vice President. I mean, it was done by his office. That's very interesting.

KATZENBACH: It started that way and we became in a way rather stuffy about it because it was not really a very good Executive order as it was drafted.

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LEWIS: Who do you suppose did the actual work? Dennis Lyons?

KATZENBACH: No, it was done by Bill Rogers [William D. Rogers] and Abe Fortas.

LEWIS: Bill Rodgers. Not the former Attorney General?

KATZENBACH: No, no.

LEWIS: The young man in Fortas' office.

KATZENBACH: Yes, right. And they had done this as an initial draft and it had a lot of

very ingenious things in it, many of which were incorporated into the ultimate Executive order. It also went rather further that we thought it could go and we had a number of meetings on it. Bill Moyers [William D. Moyers] was very actively involved in this.

LEWIS: Was he still working for Johnson then? Or was he at the Peace Corps?

KATZENBACH: He was working for Johnson then. He was quite intelligent and quite sensitive about it although not a lawyer. We redrafted the entire order, from beginning to end, but many of the ideas that had been incorporated by Fortas were incorporated in the Executive order. The major area in which he would have gone further and we cut back was in the area of what you could do with unions.

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LEWIS: That's tough area.

KATZENBACH: We simply didn't feel you could go – he wanted really to treat unions exactly the way we treated employers, and we didn't see how you could do it. And he eventually acquiesced in this as being a difficult area. It was rather an original Executive order really because it was more like a statute. We numbered it like a statue. It was rather an innovation in terms of Executive orders. That last Saturday that I was referring to we called in the guy who was responsible – and retired shortly thereafter – who was responsible for Executive orders.

LEWIS: I remember him. What was his name? An old guy in the Office of Legal Counsel.

KATZENBACH: At the moment I do not remember.

LEWIS: Bill, his first name was William. Never mind.

KATZENBACH: I should remember. He would be offended that I do not. And we got him in because we thought he ought to be involved in this. He was just great on punctuation, and he must have found thirty or forty punctuation and grammatical mistakes in the Executive

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order. That was the reason it was so late in getting it out to the Attorney General that Saturday night, was all of the things that he added. And capitalization, he was very good in capitalization – like capitalizing (I've forgotten now) either “executive” or “order.” One of the two is capitalized and the other is in small caps. We had both capitalized and that was wrong.

LEWIS: Jus for a change of pace – you remind me of that – how do you feel the Attorney General developed in his relations with the longtime civil servant types in the Justice Department? I’m thinking of people – one of the things that the Attorney General did that was notable was putting Oscar Davis on the Court of Claims. Of course, he rather quickly saw the merits of Harold Reis who worked for you. Did he come in with any view on this? How did this develop? It was one of the startling things that was new in the Justice Department, was his very close relationships with some of these longtime employees.

KATZENBACH: Well, oddly enough, I think that this probably went back to the time that he was one, when he started in the Department of Justice. I think in the few

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months that he was there he acquired some respect for the lawyers that were there. I think on the other side of the picture he was not a Wall Street lawyer; he never put his own knowledge of law above anyone else’s that I can recall. In fact, he often was quite candid about this and say, “Now look, everybody here knows more law about this than I do, but I’m the Attorney General and it’s my responsibility, so you’ve got to make it clear to me so that I can make a decision.”

I think there is a certain snobbishness that comes with being a senior partner in a major law firm where you begin to edit what people write, and you begin to question this and that, and you begin to ask them whether this case really meant what they said it meant. Now, I can think of no worse way to run the Department of Justice than to do that. I think Bobby Kennedy never wasted ten minutes in three and a half years on that kind of thing. He never questioned anybody’s legal judgment. What he did want to do was have a number of people there and, if they doubted what was being said, to tell

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him why, and was only concerned with the decision that was made and not with the form it was made in. I can remember even today, after he’s no longer been Attorney General, he asked about the Hoffa [James R. Hoffa] case in Chattanooga and he said...

LEWIS: Was this quite late?

KATZENBACH: Yes, this was in the middle of November of 1964.

LEWIS: Oh, you mean he said this today. I’m sorry. I misunderstood you.

KATZENBACH: Yes. He said, “What kind of a brief did they file?” And I said, “Well, it’s about the best brief I’ve ever seen filed in one of these cases. It was a very long brief and very well done.” And he said, “Well, what did we do?” And I said, “Well, we filed a very long brief and we thin, rather well done, too.

It's almost 200 pages." And he said, "Well, does it answer all the points that they made?" And I said, "Yes, I think it did." And he said, "Who's going to argue the case." And I said "Howard Willems." And he said, "Well, he's good." And that's more or less the way in which he took it. He asked me what points they had made in their brief, why it was a good brief.

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And I told him, and he said, "Well, how did we meet those points?" And I told him and he was satisfied with it. It was not a question of saying, "I want to rewrite the brief myself" or "I don't think this case says this, that, or the other thing." And I believe very strongly that you simply cannot run the Department of Justice by questioning the competence of your assistance and the lawyers that are working for them in the Department of Justice. If you do, you've got a hell of a big law job to do.

LEWIS: You can't write those briefs.

KATZENBACH: You can't write those briefs; you can't argue those cases; you can't brief all those points of law; you can't really do anything if you try to do it that way.

LEWIS: Well, how did he come to these conclusions about people like Harold Reis? Were those based on your feelings about people and Burke's feelings, and Archie's [Archibald Cox] feelings, or – he seemed to have an instinct. You see, I was there before he was. I say this just matter-of-factly.

KATZENBACH: You were and you still are.

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LEWIS: I'm on the way out, but I knew Harold Reis was good, and it sort of amazed me that somehow Harold Reis was discovered. That's what I mean. That's the sense in which I mean it.

KATZENBACH: He didn't base it – I don't think he based it on the views of the people that he brought in, although they may have played a part but he...

LEWIS: I mean Harold Reis suddenly ended up as his personal assistant with a terrific responsibility and a whole bunch of major crises for the government, and that was a – you know, how did he pick Harold Reis out?

KATZENBACH: Well, largely because every time Harold had been given a problem, Harold would attempt to come up with the best answer that he could

within the time that he had to come up with it. That's the thing that impressed me about him from the start, was that he – I don't think that Bob Kennedy always appreciated the difficulties of the questions that he put or how long it might take to get an answer to it, but he did appreciate getting an answer fairly quickly and...

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LEWIS: Can you give some concrete examples? About his difficulty of appreciating the problems.

KATZENBACH: Oh, he gave us a lot of problems in the Department of Justice in the Office of Legal Counsel at the outset, and a number of problems that we worked all night on. Oh, the whole problems of federal aid to parochial schools, for example, which came up, and we had to have an answer for the President the next morning.

LEWIS: I remember that.

KATZENBACH: The question of a blockade...

LEWIS: Well, let's just stick to the one.

KATZENBACH: One after the other.

LEWIS: Let's stick to the parochial schools. That's a very interesting topic. I'd like to know how that arose.

KATZENBACH: Well, it arose initially in answer to a question that was asked at a press conference and President Kennedy gave a pretty good answer, which came largely off Ted Sorensen [Theodore C. Sorensen] without consultation with anybody else. It was a good answer, particularly a good answer for President Kennedy to make.

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LEWIS: I didn't like it.

KATZENBACH: It was a very Protestant answer.

LEWIS: That is true.

KATZENBACH: Or Jewish answer, either one.

LEWIS: Right. I felt that legally speaking, I still think it was wrong.

KATZENBACH: Well, I don't think it was wrong; I think probably it was right.

LEWIS: Over-broad.

KATZENBACH: I don't think it was right from any kinds of a sensible policy point of view. I think it might have been right from a rather hard look at the Supreme Court. But anyhow, he gave the answer, and then the question came to develop this. And I gave it to somebody in the Department of Justice in the Office of Legal Counsel to work at, and they worked at it. And I had to have it at 10:00 one night because we had to have it the next morning. I got his answer at 10:00, and it was just totally useless. And so I and Harold Reis stayed up all night to produce what was a pretty good answer, consistent with what the President had already said.

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LEWIS: I remember. This was put out eventually as some kind of a document by the Department of Health, Education, and Welfare.

KATZENBACH: Yes, it was eventually put out by the Department of Health, Education and Welfare, although the whole thing was in point of fact written in the Office of Legal Counsel.

LEWIS: Oh, I knew that.

KATZENBACH: Yes, you did. And you are probably one of the few people who did. You knew that. And it was endorsed by the Attorney General. It was put out from there for the obvious reasons that you were simply compounding things to have – this was one of the few examples where I think it was a handicap to have the President's brother the Attorney General. In fact, I can't think offhand of another. But because this involved the issue of Catholicism in the schools – here it was – and the President had already said something, and then he sought the advice of his brother as to whether what he had said was correct, and it just didn't wash, whether it was or it wasn't. It was better to have Alanson Wilcox at HEW say, "Oh, yes, that's quite right" in a more

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elaborate way.

LEWIS: Now, do you think...

KATZENBACH: Which haunts us today because I agree with you that this is a bad opinion from the point of view of the future of America, although I think I was a fairly good opinion from the point of view of what the Supreme Court had said.

LEWIS: No, I never was able to agree with you on that because I could not read those, I never could read those cases to mean very much. You know, I just read them and read them, and they didn't speak to me with quite as clear a voice as.... Well, you know, that's....

KATZENBACH: Well, they didn't speak with a very clear voice but, insofar as they spoke with any voice at all, I would have thought they spoke in this direction. In fact, I think that's still true.

LEWIS: I think it's generally true.

KATZENBACH: I think if you would come out – assuming it to be litigable, I think if you would come out with an opinion very different from that the Supreme Court would have turned it down, would today.

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LEWIS: Of course, you've made a big assumption. You say "assuming it to be litigable."

KATZENBACH: Oh, you can avoid the question by never getting it to the Supreme Court, but that's not the honest, candid way of looking at the problem.

LEWIS: Well, that's what you've done on the Post Office censorship. Anyway, I think it is true that probably if the issues ever is resolved, and it may have as good a chance to be resolved right now in the next few months as it might not, it will be resolved along the lines that were at least hinted at in that analysis – that it will be resolved along the lines of avoiding the question of general aid to institutions and doing it in terms of particular needs and particular students.

KATZENBACH: Well, I think you can do it in that way and it's a sort of obvious evasion in a way, but I just happen to think that the problem of education is more important than the problem of religion in terms of education. The problem of religion is handicapping education in the United States tremendously, and therefore we ought to, for that purpose, downgrade religion as far as we can at the moment. And there

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are ways of doing it. They make things awkward, but it can be done that way.

LEWIS: We're not advancing the Kennedy Library, but the difficulty in President Kennedy's position as stated at that press conference and

backed up by your legal memorandum – and, of course, I remember the press conference very, very well – it accentuated the negative instead of the positive. It spoke of the limitations on what could be done....

KATZENBACH: Yes, it did. Yes, it did.

LEWIS: ...instead of putting it as you've just put it, which is: What we need to worry about is education, and there are limitations, but there is a great deal we can do. You see, that was the problem.

KATZENBACH: And the first memorandum that we did on this – to bring it back to President Kennedy – I went over to the White House with the Attorney General with a memorandum that we worked on all night and which I typed out with my own two fingers. And Abe Ribicoff [Abraham A. Ribicoff] was there. And we talked about it for a few minutes beforehand in Ted Sorensen's office, and then we went into the President's office. I

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remember Ribicoff saying, "Well, this is an issue, Mr. President, that you can go either way on." And I remember saying...

LEWIS: That was odd.

KATZENBACH: ..."That might have been true, Mr. Secretary, but since he's gone one way on it, it's somewhat less true today than it was before."

LEWIS: Did you say that?

KATZENBACH: Yes.

LEWIS: Right there at the meeting?

KATZENBACH: Right there at the meeting.

LEWIS: What was the President's response to that?

KATZENBACH: And the President said, "What do you mean I can go either way on it?" And Ribicoff said, "Well, I think you can either aid parochial schools or not, just as you please. I think you are free on this subject." And then he spoke to Ted Sorensen and he said, "Well, Ted, how does" – who's that fellow that wrote that book on Catholicism in America?

LEWIS: Blanshard [Paul Blanshard]?

KATZENBACH: Blanshard. He said, “How does Blanshard feel about that?” And Ted said, “Well, I’ll call him and ask him whether there’s any leeway at all.”

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LEWIS: The Scripture quoting the devil.

KATZENBACH: Then Sorensen did call Blanshard and said, “How do you feel about aid to higher education? Is there...”

LEWIS: Fantastic.

KATZENBACH: ...this, that and the other thing?

LEWIS: This is frightening.

KATZENBACH: And it was really a question – the President’s gauge on this issue was how strongly Blanshard felt about it.

LEWIS: Oh, now, that is a very – I’m delighted we asked about this. That is really – you mean.... I thought you were joking. I thought you meant the President was joking.

KATZENBACH: No, Sorensen was...

LEWIS: You mean the President really wanted to know what Blanshard’s viewpoint – Blanshard, of course, being the most dedicated opponent of aid to the Church in any form.

KATZENBACH: Yes, and the original statement came from a conversation between Sorensen and Blanshard and then when – I left out –after the Ribicoff statement I said, “Well, there are areas of some maneuverability here, for example, the whole field of higher

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education,” which we did eventually eliminate, you know. There can’t be any religious aid in lower education but you can have it in higher education.

LEWIS: Well, the President made that distinction.

KATZENBACH: The President had made this a little bit initially, and then we wanted to carry that a little bit further and talked about special programs and so

forth. And the President's response was, "Well, Ted, call Blanshard and see how he feels about this." His test on this was really the intensity of Blanshard's feelings.

LEWIS: Isn't that interesting?

KATZENBACH: And understandably, I think, in terms of election.

LEWIS: As a Catholic President.

KATZENBACH: He also said, which I recollect, on this occasion, with some feeling in the statement, that "Eisenhower could have dealt with this whole problem, but I can't."

LEWIS: Just to clarify one thing there, you said something that escaped me, that Ted Sorensen had had some prior conversations with...

KATZENBACH: Oh, yes.

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LEWIS: Now could you just clarify that? I don't know what you meant. Before the meeting is what you said.

KATZENBACH: Before the initial statement...

LEWIS: At the press conference.

KATZENBACH: You see, the President had had no guidance before the initial meeting except what he got from Ted Sorensen.

LEWIS: Before this initial press conference?

KATZENBACH: Yes, and so our text on the whole opinion was taken from that initial press conference and how much elbow room – he didn't leave very much.

LEWIS: And that was...

KATZENBACH: The first statement that he made on it.

LEWIS: And that first statement was, in turn, influenced by a conversation that Sorensen had with Blanshard?

KATZENBACH: Yes.

LEWIS: Well, that's very interesting because I've talked to Blanshard quite a bit and he never gave me the impression that he had been in counsel with President Kennedy.

KATZENBACH: Well, he was through Ted Sorensen and I suspect that if you put that question to him directly – at least for

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the purpose of the Kennedy Library – he would acknowledge it.

LEWIS: Now, something that I am interested in is the circumstances of your promotion from Assistant Attorney General at the Office of Legal Counsel to Deputy – matter of fact, we might go back one stage and examine the development that made possible that promotion and that is the appointment of Byron White to the Supreme Court. What part did you play in that or what did you know about it that would throw any light on President Kennedy's view of these matters of the Court?

KATZENBACH: Well, we had known about Mr. Justice Whittaker's [Charles Evans Whittaker] retirement, oh, some ten days or two weeks before it became public knowledge and....

LEWIS: I must say you were singularly uncooperative with the press on that.

KATZENBACH: Well, we so often are. We were looking for someone to succeed him and Byron White was rather actively involved in this because of his role as Deputy Attorney General, because of his role – really given to him by both the President and by the Attorney General – as being the fellow who really knew the most

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about this and....

LEWIS: This meaning the selection of judges?

KATZENBACH: The selection of judges, yes. And Byron was interested in a number of people and he talked with me about it. We did some work on it.

LEWIS: Well, let's be a little more specific. Who was he interested in?

KATZENBACH: Well, he was particularly interested in Hastie [William H. Hastie], and he was interested in – well, most of the work that we did was with

respect to Hastie. We made a whole review of every opinion that Hastie had written.

LEWIS: We meaning...

KATZENBACH: The Office of Legal Counsel. We ran through all of Hastie's opinions.

LEWIS: Wasn't it the Attorney General who also was very interested in Hastie?

KATZENBACH: I think he was, although I got it from Byron White rather than from the Attorney General – and also who else ought to be considered for this.

LEWIS: Byron White asked you that question?

KATZENBACH: Yes, and I gave him a list, and he gave me a list of various people. The people he had on the list were

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Roger Traynor in California, Walter Schaefer in Illinois, Hastie, Paul Freund. I added Ed Levi [Edward Hirsch Levi], which Byron concurred in as somebody that ought to be considered. I don't recall at the moment others. Maybe you would, Tony. Do you recall others? Who else was talked about?

LEWIS: I don't recall. The Attorney General spoke to me at that time and gave me a list that was somewhat longer than what you said of people who were being considered. There were political names. I recall Estes Kefauver on the list. I don't think he was considered very seriously.

KATZENBACH: No.

LEWIS: But Hastie, Levie, Freund – Who else did you name?

KATZENBACH: Traynor.

LEWIS: Traynor and Schaefer. They were at the top of the list.

KATZENBACH: They were at the top of the list. We did quite a review of Hastie's opinions. In a way people knew less...

LEWIS: I think that Arthur Goldberg was on the list also, wasn't he?

KATZENBACH: Arthur Goldberg was on the list, but the President said he didn't want to appoint Arthur Goldberg.

LEWIS: What was the reason? You said the President said

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that. How did you know the President said that?

KATZENBACH: Well he said it subsequently in time to what I'm talking about. We had Arthur Goldberg on the list. Bobby indicated that the President wanted to keep Arthur in the Cabinet somewhat longer and the President said the same thing.

LEWIS: Later?

KATZENBACH: He said, Arthur Goldberg, but later. And we went through Hastie's opinions...

LEWIS: May I ask you something?

KATZENBACH: Yes, go ahead.

LEWIS: Well, it wouldn't have come up at this time. I was just thinking about the Frankfurter [Felix Frankfurter] appointment, I was looking ahead. There was no disposition to confer with anyone on the Court about this, was there, that you know of? Was there any contact with Justice Frankfurter, Justice Black [Hugo L. Black], or anyone else?

KATZENBACH: No, not that I know of.

LEWIS: None at all.

KATZENBACH: And I doubt that there was. Well, we went through these, and then we wrote a long memorandum with respect to Hastie. There had been some – Byron had

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been concerned about some left-wing connections that Hastie had had in his early career, and these really ended up to be nothing...

LEWIS: The Lawyers' Guild.

KATZENBACH: ...of any importance at all. A review of his opinions indicated a somewhat pedestrian turn of mind. They were good, competent

opinions, there was very little that you could find in them, in my judgment, that was brilliant at all. And this was possibly in part the problem of the circuit that he was in. They were not interesting opinions, by and large.

LEWIS: The subject matter was not too interesting.

KATZENBACH: Traynor's opinions were very good. They were right in the tradition of Justice Black, and I think that was a difficulty.

LEWIS: Why do you say that? With whom? With the President or with the Attorney General.

KATZENBACH: Well, a difficulty for me initially in the sense that if you appointed Traynor, in terms of my recommendations to the President, if you appointed Traynor, you knew exactly what you were appointing to the

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Supreme Court. You know exactly the votes he would make on almost every important question.

LEWIS: If you're suggesting that he would vote like Justice Black, I don't agree with you.

KATZENBACH: I am suggesting that he would, by and large, vote like Justice Black, not on all questions but you could very much tab. On all the major constitutional questions, Justice Traynor had taken a position. And therefore when you appointed him – and remember this was the President's first appointment to the Supreme Court, which I thought was tremendously important. And on this appointment to appoint somebody whose positions on almost every important constitutional issue were clear meant that the President was endorsing each one of these views, which I think raised a problem. Maybe I was wrong, but I think it did.

LEWIS: So, you got Arthur Goldberg.

KATZENBACH: No, so they got Byron White.

LEWIS: I know. I'm looking ahead. I'll ask you about that later.

KATZENBACH: And then Byron White had to go west, in a literal

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sense, and I talked with the Attorney General about him. I said, "Have you considered Byron for this," and he said, "Yes."

LEWIS: Where did Bernie Segal [Bernard G. Segal] come in on this? Now, let's not leave him out.

KATZENBACH: Not at all.

LEWIS: Not at all. Oh, okay.

KATZENBACH: Not one bit.

LEWIS: There was some point at which his opinion was asked, I think.

KATZENBACH: Oh, yes, after the President had determined who it was going to be.

LEWIS: I didn't realize that.

KATZENBACH: And then...

LEWIS: I take it, by the way, if I may interrupt again, as far as you were concerned in this search process, it was really quite an open ball game, the President had no...

KATZENBACH: Perfectly open ball game.

LEWIS: ...pre-conceptions about this at all.

KATZENBACH: Absolutely, absolutely. And he only listened to what you had to say about them. And then Byron had to go away for awhile, and he asked me to do

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this for him. And I did him the dirty trick of putting his name on the list. I asked Bob whether he'd considered Byron White, and he said, yes, and he ought to be considered, and how did Byron feel about it. I called up Byron on the phone and said we had a lot of people on the list and we haven't got you and I'd like to put you on the list. There was a long pause, and he said, "Well, I think the President can do much better than that." And I said, "Well, the geography is very good." And he said, "Well, I think the President can do much better than this, and I would rather not be put on the list." I said, "Do you really want me to scratch you off entirely?" And he said, "Well, I wouldn't be unhappy if you scratched me off entirely. Go ahead."

LEWIS: Slightly ambiguous.

KATZENBACH: That was slightly ambiguous, and so I left him on. I think if I had

pushed him any further, he would have said, “Yes, scratch me off entirely.” So I didn’t want to do that because at that point he had become my candidate for it.

LEWIS: Why?

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KATZENBACH: Well, one, I kept thinking very much that more attention would be paid to President Kennedy’s first appointment to the Supreme Court than to any subsequent appointment to the Supreme Court. I thought it ought to be somebody who in some way was identified with the President’s views. On most of these issues, I don’t think the President really had a view very strongly, and I don’t think Byron had a view very strongly on most of these issues. But I felt that, were that true, it ought to be somebody, then, closely identified with the President, and I say to you, who undoubtedly were a strong advocate of Paul Freund...

LEWIS: And haven’t changed my mind a bit.

KATZENBACH: ...and haven’t changed your mind a bit, that the only, not the only defect but the principal reason why I would not propose Paul Freund, the one I gave the President when we talked about it, was because your first appointment to the Supreme Court should not be another Harvard professor. I think he was influenced...

LEWIS: I think that’s an unworthy reason, if I may say so.

KATZENBACH: You can certainly say so. I think that, in addition to that, there was the problem that perhaps came

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into his mind, although he did not expressly state it – and I think Bobby did at one point – was, well, they’d asked Paul Freund to be Solicitor General, and he’d said no.

LEWIS: How was this a problem? Of course, I know that’s a fact. How was that a problem?

KATZENBACH: It wasn’t a problem. It was just that when we were talking about Paul Freund Bob mentioned it. He said, “Well, of course, we asked him to be Solicitor General and he turned us down.” I don’t know whether – he said this, I think, as a negative to Paul Freund’s going on the Court. I think it was in terms of the sort of qualities that he valued highly, and one of them is, if we ask you to do something, you do it, and if you don’t, then don’t expect any reward for not doing it. And I

think he still would – if a number of people had urged that this was the best man, he would still have gotten it. I didn't feel that way. You and I disagree a little bit – not very much – about Paul Freund. And I just thought that it ought to be somebody identified with him. So then it went over to the President. I mean, it went through people.

And I

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think the thing that killed Hastie with the President, as I went through the candidates – I can run through them – with Hastie I said, "I think Hastie is very competent. I think he's not really very intellectual. I think he's rather pedestrian. He's competent and pedestrian."

LEWIS: Well, surely, in the discussion of Hastie, factors other than his competence must have entered in, politics....

KATZENBACH: They didn't really. And it's... No, the fact that he was a Negro...

LEWIS: I mean, this is novel. The first Negro Supreme Court Justice. Surely somebody commented on this.

KATZENBACH: Yes, and when I thought his opinions were rather pedestrian, this just killed him with President Kennedy. I don't know how he felt about appointing a Negro. I think he may have had some reservations about this as his first appointment, again. But....

LEWIS: Apparently Bob was quite favorable to Hastie.

KATZENBACH: He was favorable, but Hastie's opinions really don't hold up.

LEWIS: Well, he wasn't really very hot...

KATZENBACH: He's not really...

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LEWIS: I agree. Why disguise the...

KATZENBACH: He's a good, competent journeyman judge. This is what I said, and when the President accepted this, then he didn't put him in. Then Wallie Schaefer came up, and what really killed Schaefer was the rather ridiculous thing of...

LEWIS: Religion.

KATZENBACH: ...religion. Having been a Catholic when he was six months old and

had been brought up...

LEWIS: He was not unworthy or anything.

KATZENBACH: And it really was unworthy, and realizing that it was unworthy, the President asked me how really good was Schaefer. And again I confessed that he didn't hold a candle to Roger Traynor, as far as...

LEWIS: You don't think so?

KATZENBACH: No, I don't think so for one minute. I think he's shallow as compared to Traynor.

LEWIS: I think he's pretty good.

KATZENBACH: Well, then I said, well, I thought Ed Levi was another Jew and you wouldn't want to appoint two Jews to the Court. He blew up at that and...

LEWIS: What was that in reference to? Arthur Goldberg?

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KATZENBACH: No, because Frankfurter was still on the Court at that time.

LEWIS: Oh, you mean he wouldn't want to appoint a second Jewish member of the Court. I see. Sorry.

KATZENBACH: A second Jew, yes. And he said, "Why the hell shouldn't I?" And that was no argument at all against Ed Levi. But Ed Levi kind of got left at that because...

LEWIS: This was in a meeting with the President that you yourself had. And who else was there?

KATZENBACH: Well, there was Bobby.

LEWIS: And Byron? Or just the two of you?

KATZENBACH: No, Byron was away, he was out West. And then I came to Byron and he got quite enthusiastic.

LEWIS: Did you come to Freund? Before we get to the winning candidate, had you passed Paul on this list?

KATZENBACH: No. I said that I thought that Paul Freund would be a very good justice, that I thought he was a student of the Supreme Court and would be well received, but I thought that Freund had some of the problems of Frankfurter, although these were exaggerated by having been somewhat of an apologist for Frankfurter

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for a long time; and that I thought he really would be rather distinct from Frankfurter as a Justice; and that my major problem with Paul Freund was one that I gave which you said was inadequate, which was that your first appointment shouldn't be the leading Harvard candidate. And so then the issue with him kept coming down to whether it was Byron or....

LEWIS: Traynor?

KATZENBACH: No, the Third Circuit.

LEWIS: Hastie?

KATZENBACH: Hastie. And it kept up being Byron or Hastie for, oh, two or three days. And then it became a question of whether it would be Bryon or Paul Freund, who came back into the picture for reasons I know not.

LEWIS: Probably Ted, I think, who was very strong for Paul.

KATZENBACH: May have been, may have been. And then he came to me one day – I was somewhere in the House Office Building, and he called me and he said, 'Byron wouldn't be really acceptable to Bar, would he?' And I said, "He would be very acceptable to the Bar. I have no question about that." And he said,

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"What makes you think so? Because he's never been on the bench or anything." Then I said, "Mr. President, every practicing lawyer likes to think of himself as being eligible to go on the Supreme Court, so that will be no handicap to Byron White." And I said, "If you wish, let me check that out with Bernie Segel."

And so I called Bernie Segel about it, and Bernie said, "I just will guarantee that I can get, in a few hours, an 'exceptionally well-qualified' for Byron White if that's the President's selection." So I told the President of this, and he said, "No kidding?" And I said, "Yes," at which point I told the President I was going down to Williamsburg on a long-promised weekend for a birthday party for my boy, so that this was the last conversation that I had with him. And the President called Joe Dolan [Joseph F. Dolan] and asked him to get the ABA committee's thing on Byron White, and it came out that way.

My major argument – and I think, I really think the deciding thing on Byron White was a totally unworthy thing from Byron's viewpoint or anybody else's – I said to the

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Attorney General, “I really think Byron White would be the best person to appoint to this job, but you have just lost John Seigenthaler as Administrative Assistant, and I think it would be very, very tough on you to lose Byron White just a couple of weeks later, because these are really two people closest to you and the Justice Department to lose. And I think that’s a legitimate consideration, and you ought to consider it before recommending Byron.” I think that was probably the argument that got Byron the job because he said, “I’m not going to stand in Byron’s way. I can handle the Justice Department without Byron White.”

LEWIS: That was really nefarious.

KATZENBACH: I didn’t mean it that way.

LEWIS: The only thing I resent in the whole...

KATZENBACH: I didn’t mean it that way. It was said, really, because it was quite true. These were the two people at that point he depended most on.

LEWIS: Well, you know, I... [Interruption] Well, that’s the first of the two Kennedy Supreme Court appointments. What about the second in terms of, first, the awareness of a vacancy? President

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Kennedy had called on Justice Frankfurter during the summer after he became ill, after he suffered the stroke. When did you all become aware of his resignation, retirement? Was there any warning on it?

KATZENBACH: I don’t think there really was any warning on it, none that I knew of. At the time of the first vacancy, President Kennedy had said a half a dozen times when I was there, “Well, I want to put Arthur Goldberg on the Court, I promised that I would put Arthur Goldberg on the Court, but I don’t want to do it now.”

LEWIS: What did he mean by ‘I promised’? Was this a concrete, specific? I mean, how did that come up?

KATZENBACH: I don’t know. My recollection is that he used the words ‘I promised.’ I don’t – even today I have difficulty in believing that it was sort of a...

LEWIS: A little unlikely, isn’t it?

KATZENBACH: ...a promise in the sense that Arthur Goldberg took his Cabinet job

because he was promised this. I rather think it was more simply in the casual sense of the word, that the Supreme Court had come up and he had said to Arthur that Arthur would have

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a good crack at this when the vacancies came up. I don't think it was in terms of any redeemable political promise at all. He always had the intention of putting Arthur Goldberg on the Court, and the first time around he just thought this was too early, that he needed him for other purposes. Goldberg was one of the most valuable members of the Cabinet, no question about that in my mind. He was active in everything and full of life and zest and all the things that President Kennedy loved and full of imagination and full of dedication and ability to achieve, to deliver.

When the second vacancy came up when Frankfurter resigned, I don't remember anything about this in terms of inside information, prior knowledge, or anything else. The vacancy came up. I kept awaiting some word from the President as to looking into this, that, and the other thing about it. I was over with Arthur Goldberg in the evening of the day that he was appointed. We had – he was appointed, I think...

LEWIS: The evening before, you mean?

KATZENBACH: Yes. But I think he was appointed rather late at night; I think he was called because I remember in

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the late afternoon having...

LEWIS: No, the President announced it at his press conference that afternoon.

KATZENBACH: Well...

LEWIS: I recall it because the Attorney General told it to me shortly before lunch.

KATZENBACH: Well, all right...

LEWIS: ...about noon, he told me that that afternoon the President would announce Goldberg...

KATZENBACH: That evening I spent quite a bit of time in the Labor Department talking with Arthur Goldberg and some of his assistants about the problems of the Mexican commuter labor. We talked about this at some length, and he had to get off to Chicago on a plane. And he left that evening, if I recall correctly, for something going in Chicago that day. At one point in the conversation, he was

interrupted by a phone call from the President. I don't know whether it had anything to do with the Supreme Court appointment or something else. But the President never called me. I suppose he talked with the Attorney General. The Attorney General never talked to me. All I know is that

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the next day (and I had thought of it even as being that evening, but I think you are probably right in saying that it was the next day) when he was in Chicago – I do remember that – the President called him and asked him to be on the Supreme Court.

LEWIS: Do you have any knowledge or intimation of how the President felt about the appointment later?

KATZENBACH: No, none at all. I do have some intimations as to how Arthur Goldberg felt about the appointment, because for awhile things kept coming up and he kept wanting to be a part of these things and having great difficulty being a part of these things.

LEWIS: Difficulty not being a part of these things.

KATZENBACH: Well, he wanted to do various things and give the President – I think during the Bay of Pigs episode.... Was it the Bay of Pigs episode? What was the...

LEWIS: I remember the railroad strike; I don't remember the Bay of Pigs.

KATZENBACH: Wasn't he appointed before?

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LEWIS: No.

KATZENBACH: No, it wasn't before the Bay of Pigs.

LEWIS: Missile crisis.

KATZENBACH: Missile crisis, the Cuban missile crisis. I remember talking with Mr. Justice Goldberg about this and his being very exercised and excited about this. And I said, "If you really feel that way, why don't you call the President about it?" And he said, "Oh, I already have."

LEWIS: But you never had – I mean, I had some expressions of surprise from the Attorney General about the opinions that Justice Goldberg was

writing as a member of the Court, the doctrinaire quality of them. Did you have anything of that kind or...

KATZENBACH: No, except to the extent that to a degree on the prior appointment, when Arthur Goldberg was one of the people we looked at, these had been predicted.

LEWIS: Well, you had anticipated a rather doctrinaire viewpoint, doctrinaire liberal viewpoint?

KATZENBACH: Yes, yes. And I think with Byron White a more liberal viewpoint perhaps than he had come out with, but always with a careful viewpoint. And I

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remember one of the comments that Bobby Kennedy made about him. He said, "Well, Byron ought to be good because he's got so much sense," which I think Bobby generally uses in the sense of blunting doctrinaire ideas with some kind of practical pragmatism.

LEWIS: Well, I don't have any question myself that Byron White is the sort of Supreme Court Justice that Robert Kennedy, on reflection, would have wanted to appoint. I also have no doubt that Arthur Goldberg is the sort of Supreme Court Justice he would not want to have appointed.

KATZENBACH: Well, I go further...

LEWIS: That's about the batting average of most Presidents, I might say.

KATZENBACH: Well, I think that – you have nine Justices; you can't really bat 500 at any time. I do think that in terms of whatever politics the appointment of Byron White had, whatever the reaction to this was, I think I was rather right in thinking this would be a very favorable reaction from the press, from the public, and from the Bar generally.

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LEWIS: What indication did you have in general of the President's attitude toward the Supreme Court, the seriousness with which he took this appointment in his own terms of history – these appointments, I mean – generally?

KATZENBACH: I had very little indication of anything on that. He took the appointments very seriously. These are almost the only judicial

appointments he took seriously at all. He got personally involved in the Supreme Court appointments. The others he was perfectly satisfied to leave to other people's judgment and he would ask only occasional questions about them. The Supreme Court he did feel were personal, and he did feel that these appointments were important. I don't think he would have attributed the importance to these that you would have attributed to them or that I might have. I don't think he really saw the Supreme Court as being a really co-equal branch.

LEWIS: You don't think he foresaw, for example, that the Supreme Court, as a result of his appointments, two appointments, that as a result of those two

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appointments, the Supreme Court would be deciding the political makeup of every legislature in the country – just to take the great example of the importance of Supreme Court appointments.

KATZENBACH: Well, it wasn't as a result of those two appointments.

LEWIS: Oh, indeed it was, because if Justice Whittaker and Frankfurter had been on the Court the result would have been the opposite. They made the difference, those two appointments. And that's pretty important, isn't it?

KATZENBACH: On apportionment?

LEWIS: Oh, yes.

KATZENBACH: Did that come after those two, both appointments?

LEWIS: The first case, Baker and Carr...

KATZENBACH: Baker and Carr came...

LEWIS: ...which the Court took jurisdiction came between the two appointments.

KATZENBACH: It came before either, didn't it?

LEWIS: Well, that's true. It came before the appointment but Whittaker did not sit. He had left because of so-called illness and three or four days later he retired and Byron White was appointed.

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So there was an eight man Court for Baker and Carr. But as to the subsequent case, there were six judges for the proposition that the Constitution required one man, one vote in both Houses of state legislature, and I can assure you that neither Justice Whittaker nor Justice Frankfurter would have voted for that proposition.

KATZENBACH: Nor would have Robert Kennedy; nor would have John F. Kennedy.

LEWIS: You don't think so. I'm not so sure about that.

KATZENBACH: Well, I'd say this with conviction about – well, with conviction about both. If you put it in immediate terms, I think after Baker against Carr the Attorney General certainly saw it and I think the President saw it as something down the road and I don't think he expected it to come this quickly. But if you ask me whether he thought of this in terms of his appointments, I'm afraid the answer would be no, he didn't think of it at all.

LEWIS: I think someone should have. At the time of the Goldberg appointment that was very much on my mind as a reporter, how would the appointee vote

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on apportionment.

KATZENBACH: Yes, and I think it might have been, Tony, except I don't really think – and the Attorney General would know better than I – I don't really think there was any thought given to the Goldberg appointment merely because he always had been persuaded from the outset that Arthur Goldberg was going to be on the Court.

[END OF INTERVIEW]

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