

Burke Marshall Oral History Interview – JFK#5, 6/20/1964
Administrative Information

Creator: Burke Marshall
Interviewer: Anthony Lewis
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Biographical Note

Marshall served as Assistant Attorney General in the Civil Rights Division of the Department of Justice (1961-1964); general counsel of International Business Machines Corp. (1965-1969); and as an adviser to Robert F. Kennedy. In this interview, he discusses civil rights protests and violence in Birmingham, Alabama in the spring of 1963, crafting the legislations that would become the 1964 Civil Rights Bill, and George C. Wallace's attempt to stop the desegregation of the University of Alabama at Tuscaloosa, among other issues.

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



Burke Marshall



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- Page 21 line 6 through line 20
- Page 22 line 22 through line 33
- Page 24 line 15 through line 16
- Page 33 line 35 through line 38
- Page 34 line 40 through page 35 line 7
- Page 40 line 17 through line 21
- Page 42 line 17 through line 24
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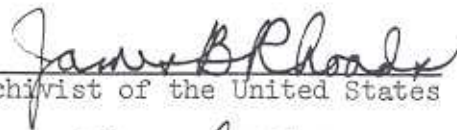
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Burke Marshall

March 6, 1972

Date



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Burke Marshall—JFK#5

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Fifth of Five Oral History Interviews

with

Burke Marshall

by Anthony Lewis

June 20, 1964
Washington D.C.

For the John F. Kennedy Presidential Library

LEWIS: Today is June 20th, 1964, the morning after the Senate's passage of the Civil Rights Bill and one year and one day after President Kennedy's [John F. Kennedy] submission of the bill. Burke, suppose we talk about the origins of that bill in the spring of 1963, and I guess those origins would begin in Birmingham. How did you first get connected, get aware of the Birmingham situation?

MARSHALL: As I say we—I mean mainly me here not the White House—had devoted quite a bit of attention to Birmingham for two years because it's such a tough city. So I knew a number of people down there, whites and Negroes, and there was a political situation, local political situation, a change in the city government, a vote turned on sort of not on segregation-integration issue but on violence-non-violence issue. And the day after the election in which city government was changed, and the new mayor was elected, the editor of the newspaper called me and said they understood Martin Luther King [Martin Luther King, Jr.] was going to come down there and demonstrate, and I called Martin Luther King at that time and talked to him about it.

LEWIS: This would have been when, the fall of '62 or later?

MARSHALL: No, no, later. This would have been, without retracing the whole business this would have been in April, I think, in 1963.

LEWIS: Oh, I didn't realize the election was that late.

MARSHALL: Well, there were two elections, but one to change city government and one to elect the mayor. And the election of the mayor was either March or April 1963. And it was contested in court by Bull Connor [Theophilus Eugene Connor], and so that was unresolved at the time. But the election had taken place. King had held off his demonstrations, his protest demonstrations, until after the election. They started right after the election. The editor of the newspaper, on behalf some of the white citizens, asked me to try to persuade King not to do this on the grounds that they had just elected a new mayor, the legality of his election was in court, that if nothing happened until the legality

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of his election was in court, that if nothing happened until the legality of his election was established that then he would take steps to ease the racial tensions in the city.

LEWIS : Who was the editor?

MARSHALL: His name was Townsend, Vincent Townsend of *Birmingham News*. So I, although I really didn't think it would do any good, I did that, I did intervene with King, made an effort to get him to—I presented these arguments to him. They obviously had his phone tapped.

LEWIS : Who? The Alabama people?

MARSHALL: Yes.

LEWIS: Well, he was in Atlanta, wasn't he?

MARSHALL: No, he was in Birmingham at the time. He'd just come there that day. And either the newspaper had the phone tapped or the city authorities had the phone tapped, or they both had the phone tapped. In any event, it was perfectly clear in later conversations that they knew everything I had said to King. As a matter of fact that was a great asset afterwards to me, I mean, I think, in connection with my good faith with the whites down there. But that's the first thing we had to do with it. Well, the demonstrations started in April or March or whenever it was right after that election, that first small demonstration. And I kept in touch with them, with the Negroes and the whites. And the pattern of police action at that time—Connor was still in office—was that any Negro that stuck his head out of the door with a sign got arrested. And as a result of that repressive kind of police action the demonstrations gained momentum; and in May, after maybe a month, in May they started to get very large. And in discussions with the sheriff [Melvin Bailey] in particular and Vincent Townsend and I think some other whites, it was decided by

the Attorney General [Robert F. Kennedy] that I should go down there. And I did go down there in May in order to see if anything could be done about the situation.

LEWIS : Now this was...

MARSHALL: By that time the demonstrations were very, very large. They were in the streets, there were pictures throughout the nation, throughout the world, police dogs and fire hoses and one thing or another. So it was a matter of great concern to the President, to President Kennedy at that time because it was sort of a hopeless situation in terms of any lawful resolution of it.

LEWIS: You say it was a matter of great concern. Can you tell about any personal meeting you had with him, discussion, before you went down?

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MARSHALL: No, I did not—I mean I don't say I didn't talk to him about it, but we didn't have any meeting or any formal conference about what to do. It was just one of these things you're talking—I mean I'm talking to the Attorney General all the time, and he talked to the President, and I'm sure I talked to the President about it, but we didn't have a conference and say these are the steps we should take or anything like that. We just.... I think I went down—I think we decided.... I talked to the sheriff one day—I can't remember what day it was, but it would have been around the 15th or 16th of May, the first day of very large demonstrations in the street. I talked to the sheriff and Bob Kennedy said, "Do you think you should go down there?" And I said, "I think I should." And I was off within half an hour, I suppose.

LEWIS: And at that point—of course you say an hour so there wasn't really any chance for a careful plan of action, but I'm trying to always keep the legislation in mind here because it eventually...

MARSHALL: At that time...

LEWIS: Just let me.... Was your role envisaged when you left that day as a mediator? Was there any thought being given then to any longer range action the department could take to prevent this? What was the purpose of your going?

MARSHALL: The purpose had nothing to do with the legislation. The purpose of going, in a sense, was to do something. It was very difficult I found out that day really to some extent—I talked to King and I asked him what he was after. He really didn't know. So I told them—this was all the same day the day I went down before I went down in the evening.... They had a meeting and then they decided in the meeting what they were after. Well, that was after several weeks of demonstrations. And when I talked to him that day, I pointed out that the city government.... No one knew who the city government

was—it was still before the courts—and that he couldn't very well be demonstrating to ask something of the city government. Well, they came up with some demands, requests, they came up with a program at least, it was directed mainly at the large downtown stores, principally on the fact that the lunch counters were closed to Negroes and that there were no Negroes employed in other than the janitorial capacities.

They came up with this, and I talked to a lawyer I knew down there, a young lawyer, David Vann, who represented one or more of the stores. And I said that I talked to King and, "These are the things that he wants. Why don't you call together a meeting of your clients and put it to them?" And he did that that day. He did at least talk to them and he said impossible, hopeless. Well, of course, you know, they hadn't been thinking about it and they were—just anything

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that Martin Luther King wanted was poison to them. But the initial report was that that was hopeless.

Then after I talked with the sheriff, who was a very fine person named Bailey, Mel Bailey—he thought there was some point in my coming down there to see what I could do. And as I say I made that call from the.... [Interruption] So I went down there to see what I could do to change the situation. There was no legal remedy. That was clear from the start, and I know that we discussed that with the President, President Kennedy, so then he understood it, but most of the country didn't. You know, they wanted him to send in troops, they wanted him to do this, that, or the other thing. But in fact the complaint was over service in the lunch counters. That was the principal complaint, and it was not a complaint that could be solved under law in any way at that time. I know when I was down there, of course, I wasn't at them but I talked on the telephone back here a good bit, and I know they had a meeting, a three or four hour meeting over at the White House with Nick Katzenbach [Nicholas deB. Katzenbach], Ted Sorensen [Theodore C. Sorensen], and I suppose that Bob Kennedy must have been there some of the time at least.

LEWIS: Not the President, just the staff?

MARSHALL: No, I think the President asked for the meeting, but the meeting was a think session to think what to do. And they thought what to do for four or five hours, and they ended up with a nothing. I mean there was nothing to do. They went through the possibilities. I talked to Nick about it, I think, afterwards, or Ted or one of them on the telephone, and they'd been all through this and they couldn't think of anything to do other than what I was doing, which was to try to explain the Negro situation to the white people and the white people's situations to the Negroes when they wouldn't talk to each other. The President, it was a matter of national and international concern at the time because of the mass of demonstrations.

LEWIS: Two questions at that point. You say it was explained to the President, really, before you went down that there was no legal remedy here, and

there was all this calling for troops and so forth. Two questions there. One, did the President at this early point ever say, even casually, “Couldn’t we provide a legal remedy or shouldn’t we provide a legal remedy?” And secondly, did you find when you got down that Dr. King’s objective really was to have in troops?

MARSHALL: I think the answer to the first question is that the President didn’t say that to me, and I don’t know that he said it to anyone else. Until we got back we didn’t talk about legislation at all or at least I didn’t, until I got back from Birmingham and the Birmingham situation had been at least temporarily resolved. As far as King is concerned, I think that he wanted a success himself. He wanted success for himself and he wanted the success for his people. It was

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partly cynical, and it was partly sincere.

LEWIS: What do you mean partly cynical?

MARSHALL: Partly cynical in the sense he wanted it for himself. He, King, as a Negro leader, wanted to be *the* Negro leader who had a success. In part he was just trying to accomplish something. I do not think that he wanted, at that time at least, troops in Birmingham or that he was trying to create a situation where the troops would be sent in, although that changed somewhat later. And I also don’t think that he had at all in mind legislation or anything like that. He never said that to me, and he would have said it to me if he had said it to anyone or if he had had it in his mind, but he wasn’t thinking that far ahead. He was reacting like most people were, he was reacting to a situation.

The President.... During the week.... I was down in Birmingham about a week and it was a very unpleasant week for the President I’m sure, because there were every day hundreds, thousands, of Negroes demonstrating in the streets of Birmingham. They were being kept under control by police action, which I think was not bad police action on the whole, but it was repressive—it wasn’t brutal but it was repressive. There were hundreds of arrests made, and the mass marches were stopped physically with police dogs and fire hoses. And the pictures of the police dogs and fire hoses going throughout the country stirred the feelings of every Negro in the country, most whites in the country, and I suppose particularly colored persons throughout the world. And all of that emotion was directed at President Kennedy. “Why didn’t he do something?” And there was really nothing he could do except be patient and keep his temper, and those are the two things that he always did, and he did them then. But it was very frustrating for everybody, and I think that he asked the people that he had confidence in that were up here—as I said Ted Sorensen and Nick and other people—to meet and talk out, to think if there was any other course for him to do except do nothing, and hope that I’d accomplish something down there by being there. So that is what he ended up doing during that week. He was of great assistance in persuasion of people.

The way it worked in Birmingham was a series of meetings—the pattern, I mean the pattern from the moment I got there, was first I had a meeting with the merchants and then I’d have a meeting with some Negro leaders and then it was arranged so that some Negro,

local Negroes, would meet with a very small group of whites, and then I'd go and meet with King in the middle of the night. And we'd start that over again and try to get issues clarified and see if any agreement or consensus could be reached on the issues. And as this progressed, it progressed up from the people who directly affected—which were the department stores and their lunch counters, and their employment practices—they wouldn't do

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anything unless they had the backing of what they considered to be, and they all talked about “power structure,” or “the big mules,” or some phrases like that about very powerful businessmen in a really remarkable way—remarkable how much these people didn't have a mind of their own. But that's what they wanted. They wanted....

LEWIS: That means U.S. Steel [United States Steel Corporation]?

MARSHALL: Well, U.S. Steel and the bankers—there are two banks down there—the presidents of two banks: TCI, Tennessee Coal & Iron Division of U.S. Steel; Hayes aircraft [Hayes International Corporation]. There were a number of businesses which were large employers and had financial interests. The telephone companies...

LEWIS: Continuing on the situation in Birmingham, Burke, you were saying that the department store people wanted such elements in the power structure as TCI and that aircraft company, and what else?

MARSHALL: The telephone company, a big employer, important. The president of the telephone company was a man named Frank Newton, and he.... Every time I saw President Kennedy something amusing happened. I always liked to see him because there was always something entertaining even on the most terrible occasions—and I hardly ever saw him when there wasn't something very unpleasant going on. But I remember after the children were killed at the church, September 1963, in Birmingham, there was great tension. And one way of relieving that tension was for the President to see the Negro leaders and accept from them their expression of grave concern and so forth. He did that and he also saw to it and we saw to it that he saw some white people from Birmingham, too. They wouldn't come together. Frank Newton was one of those that came. The President referred to him after as that “son-of-a-bitch that sat there” and pointed to the end of the couch on the left of the rocking chair he used to sit in. In any event, there was a group of maybe seventy men like that.

LEWIS: Seventy?

MARSHALL: Yes. Presidents of these companies. They had an organization—sort of an organization, called Senior Citizens [Senior Citizens Commission]. It

included the former governor, it included Mayor Boutwell [Albert Boutwell], it included the group of men who were rich, powerful, large employers, conservative, some of them mean, some lawyers—not many lawyers, but some lawyers. And the way the situation progressed in Birmingham, it was necessary to get this group of about seventy men to endorse...

LEWIS: Seven?

MARSHALL: Seventy. Endorse a settlement with King; the settlement being an agreement to desegregate the lunch counters within a certain amount of time, to employ some Negro clerks, and some other matters. That had to be endorsed, and the meeting was set up in which it was to be presented to these men. The feeling among them was very negative, and I would call up whenever it occurred to me or

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whenever anyone suggested it, I'd call up to the Attorney General, usually, and say, "Here's one of these men and he's in X company and you should do something about him to try to persuade him before the meeting to take a position on that." The Attorney General would get someone to call that person or he'd call himself. The President called three or four men like that; very conservative men. And each of them, however—I can't remember their names now, I can remember their faces but I can't remember their names—but each of them reacted to some extent at the meeting that it was the culmination of this effort in Birmingham. I spoke to them. And the President also saw to it that all the members of his cabinet and everybody helped. And Douglas Dillon [C. Douglas Dillon] called some people; Bob McNamara [Robert S. McNamara] called some people; I think Bill Wirtz [W. Willard Wirtz] called some people; Luther Hodges [Luther H. Hodges] called some people; the Attorney General called a number of people. Of course, he wasn't well loved in Birmingham at the time by the whites, but he was very effective in explaining things to people, and he called some people. As I said, the President did himself. We used every channel of that sort that we could to try to put to these men their responsibility, the importance of this nationally, the fact that there was no other way out. And that had effect, it obviously had an effect on these men. It obviously had an effect on these men personally. And it affected them right at the proper time; it affected what they said at this meeting. The meeting, as I say, was a culmination of this matter, was held at the Chamber of Commerce headquarters in Birmingham. There were fire engines going by all the time outside, sirens screaming, reports would come in from the police chief and the sheriff that they didn't think they could handle the situation for more than a few more hours. It was very tense. And it started off, I remember the first thing that anyone said at that meeting was the former governor whose name I've forgotten too.

LEWIS: Not Folsom [James E. Folsom]?

MARSHALL: No, no. An old man who I guess was a good governor when he was governor. He'd been honest, which was not always true of Alabama

governors. He was before Folsom, and I've lost his name, but he's identifiable. He was, at the time, head of the committee that was supposed to bring business to Alabama. But he started out by saying that they should immediately, right then and there, call the Governor [John Malcolm Patterson] and get martial law declared and send in the troops and suppress this whole business. So that was the first suggestion and I thought we were going downhill. But the people that had been talked to spoke up.

The chairman of the meeting was a man named Sid Smyer [Sidney W. Smyer], who was a real estate man there, who felt that an adjustment had to be made in the life of Birmingham, an adjustment with the Negroes. And he had been one of those, the principal one, who had agreed to meet with the Negroes and me. And we had had.... Not with King, but he would meet with other Negroes, and then I'd go and meet with King. He was chairman and he asked me to talk to them and I did, explaining what the situation was and telling them, as I think nobody

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had told them before, that they had a solution in their hands, and the solution was to endorse certain things if done by the downtown merchants. And after that was explained to them, some of the men that had been called by members of the Cabinet, and at least one man who had been called by the President himself, spoke up and said that they thought this adjustment had to be made, and that.... [Interruption] They all agreed to support this resolution of the matter, these men did, seventy of them, and with, I think, maybe not more than two or three dissents. So that was it, and everything after that was a question of making sure that nobody hurt somebody else's feelings by what he said to the newspapers.

I called the Attorney General right after the meeting, and he was in the President's office. I spoke to the President and I told the President that the meeting had worked and that I thought we were going to have a solution the next day. The President had a news conference the next day, and he was able, at the news conference, to say that the situation in Birmingham had been resolved at least for the present. But the resolution of it, of course, depended upon persuading these seventy very conservative people that it had to be done this way; and it was temporary, it affected a few lunch counters. And I think that—I don't know what discussion the President and the Attorney General had. Well, before I came back, but I think as I came back, as soon as I came back, everybody's mind was turned to the future and they thought this pattern of Birmingham had been established, that it would recur in many other places. And it did that summer. And the President wanted to know what he should do—not to deal with Birmingham, but to deal with what was clearly an explosion in the racial problem that could not, would not go away, that he had not only to face up to himself, but somehow bring the country to face up to and resolve. And during the week after that, that's what he decided to do, and so that's what led to the legislation. That's the general situation that led to the legislation. I think the President—I don't know this because I wasn't there, but I think the day I got back or sometime around there before his news conference or right around that time, the President must have asked the Attorney General to make recommendations on what solution, legal solution, solution of law, could be devised to meet the situation in the country. Shortly after I came back, which was, I think, on May 22nd, we started...

LEWIS: What day of the week was May 22nd?

MARSHALL: I think it was a Friday.

LEWIS: Friday. And the President's press conference was the following Wednesday?

MARSHALL: No, the President's press conference was on a Wednesday. The meeting I spoke of of the Senior Citizens was on a Tuesday before. I must have come back on Thursday or the day of the press conference, I'm not sure.

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LEWIS: The reason I'm asking that is I recall the press conference at which the President said for the first time that he was going to ask for further legislation, legislation going beyond the voting bill that had gone up earlier. And I remember telephoning the Attorney General. I believe you were in his office, I'm not sure. The Attorney General for the first time said to me that the legislation would deal with public accommodations, and I remember it was a great surprise to me.

MARSHALL: I think that was not the press conference at which he had...

LEWIS: It probably was the next one.

MARSHALL: I think it was probably the next week. I think it was the next week, I'd be quite sure, Tony.

LEWIS: It certainly was...

MARSHALL: This is my recollection of the development of decision on what would be in the legislation. I think without having a meeting or discussion about it, everyone concluded that the President had to act and, as I said, not only face this himself, but somehow bring the country to face this problem and resolve it. So it was a question of how to do that, and it involved, at least among other things, legislation. It was a pretty frantic four or five weeks after that because we also started a series of meetings with businessmen and other meetings. And the President two or three weeks later started a series of meetings at the White House. But his meetings were after he decided on the legislation. We, the Attorney General and I, started meeting with businessmen that day after I got back from Birmingham, I think.

But in any event, the first time that we talked at some leisure about the legislation, the Attorney General and I talked about it, was on a trip that he made to speak in North Carolina. In order to get away from these meetings and to get away from the telephone, the demonstrations, and whatnot, I rode down with him on the plane, and that gave us an hour, maybe, each way.

LEWIS: How soon was that after you came back?

MARSHALL: Well, it was very shortly after. It might have been two days or three days. It was very shortly after. We discussed what we thought should be in the legislation, and we discussed public accommodations then. And I think that—I don't know who else was there on that trip except Ed Guthman [Edwin O. Guthman]. I think that that was all. But I think that we thought after that trip that public accommodations should be included and that the bill should be comprehensive in that it didn't deal with pieces of the problem but it dealt with all parts of the problem that could be dealt with by law. There was a lot.... There

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was a question about the most difficult question, the most difficult question always in congressional terms, was in connection with employment rather than public accommodations and how to deal with that.

LEWIS: You say that almost casually: you felt that after that trip there must be something about public accommodations. And yet certainly it was a wholly novel idea over the years. Various civil rights organizations, Senators Javits [Jacob K. Javits], Humphrey [Hubert H. Humphrey], Douglas [Paul H. Douglas] had introduced every conceivable, I would have thought, every conceivable kind of civil rights bill just to do everything. Nobody, so far as I know, had ever proposed a general federal right of service in all significant public accommodations.

MARSHALL: Well, that's true, Tony.

LEWIS: So I'm just asking how did it come to your minds—of course, it was in the context of the Birmingham problem; I know that. But you didn't have any legal memos from anybody, you just.... How did the conversation go?

MARSHALL: Well, what you say about the bill is right, but it isn't that we weren't aware of the intensity of the feeling about this. The President was acutely aware of the intensity of feeling about public accommodations and being denied access to these lunch counters. Sit-ins had been going on since 1960. The President's message to Congress in February of 1963 referred to the problem. He didn't ask for legislation but he pointed out in the message, if you'll look at it, he pointed out in the message that cruelty of the indignity of a person being refused service because of his skin, particularly in a place where his custom and his trade was otherwise sought. That's in the February message. Now, in the context of Birmingham and our conversations with the President at the time, my conversation with Bob Kennedy, was always in the context of not having any solution under law to this problem. And that was *the* problem in Birmingham. [Interruption]

LEWIS: Well, there you were in the plane—I'm just trying to recall the situation—

of looking for a legal solution, something that would put this thing in the courts. Did you have in mind the civil rights cases? What was your thinking process really here? Did you say, “We could just try to outlaw discrimination nationally”?

MARSHALL: Well, I can’t recall the conversation in that detail. You know, as I said, we had a very frantic month. But I think I would say that the essence of it was that Bob asked whether such a law could be written, would be constitutional; and I said I thought so, and I told him I thought it could be justified under the commerce clause.

LEWIS: Commerce clause even at that early moment?

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MARSHALL: Yes. Right from the beginning, in my own mind. And so that was the end of it. I’ve always had no problem in reaching an understanding of what the Attorney General thought without going into a great long discussion with him, and I just don’t think it took a very long discussion for us to agree on that point.

LEWIS: Just as a matter of curiosity, when you put the problem to your assistants, Harold Greene [Harold H. Greene] or whoever else was involved... [Interruption] I suppose when you came back you must have told Harold Greene or someone to set about drafting such a piece of legislation, at least for discussion purposes at the White House. Was whoever you asked surprised?

MARSHALL: Probably. Probably. I would say probably.

LEWIS: Was it Harold Greene? Who does this? Who would do the drafting?

MARSHALL: I think Harold Greene and Harold Reis [Harold F. Reis], Norb Schlei [Nobert A. Schlei] and people in Harold Greene’s staff and maybe some other people up in Norb’s office. Those were the people that were assigned drafting. But we didn’t come over—I mean, again, the way that President Kennedy worked and the Attorney General works, it wasn’t that we came over and had a formal conference with a draft in our hand. I think we talked about the legislation on that plane, and if there was a last word on it, I would say that Bob said, “Well, we’d better go see the President when we get back.” And as I remember it, it was the day we got back, or the next morning or something like that. As soon as the President had some time free, we went over there to the White House and met with the President and Ted Sorensen and Larry [Lawrence F. O’Brien], I’m sure, and I think Kenny O’Donnell [Kenneth P. O’Donnell]—and I would guess Nick, but I can’t remember whether Nick was there or not; I just don’t remember, but I would think so—and I think that’s all, and talked with the President about what should be in the legislation. I don’t think the President for one moment had any doubt but that he should ask for legislation that included the public accommodations problem. My own judgment, the

judgment of the Attorney General, we both saw it in the same way, which was that for the future that this, after Birmingham, was already a terrible problem with the sit-ins and everything and it was going to get worse and worse and worse and had to be dealt with. So I don't think there was too much debate, too much argument about that at the meeting that I recall where the President essentially decided what he wanted. And we discussed it and nobody said, "No, don't do that." And the President wanted to do it, he wanted to have a legal solution, as he said in his message and he said then and he said constantly. He wanted to bring this problem under law. So the discussion was about other things and not about whether or not there should be public accommodations title.

LEWIS: He relied on your judgment that this was a lawful constitutional way to do it. So perhaps what was discussed was the political possibilities of it. Was that discussed?

MARSHALL: Of getting the bill?

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LEWIS: Yes.

MARSHALL: Not so much in the public accommodations title, not at that first meeting. Employment. [Interruption]

LEWIS: Now, was the decision not to include a specific proposal for an employment title reached at that early meeting?

MARSHALL: No. It was discussed, and it really wasn't reached finally until the message was drafted. But the President was very conscious of the economic side of the problem—I mean it wasn't just constitutional rights—the economic side of the Negroes' problem. Of course, he was concerned at that time anyway about the tax cut and the economy, and he always kept saying—I heard him say, I must have heard him say a dozen times around that period—about how the economy was on its longest continuous upswing or whatever. It was the statistic he kept referring to about the period of time since the last recession, and so he was very conscious of that. The decision to ask for legislation and to bring this problem in a comprehensive and serious way to the Congress was a very, very important decision for him, of course. He knew that it would tie up the Congress for the rest of the year, at least; he knew that it would make some other legislation impossible; he knew that it would be very divisive of Southern support that he needed for legislation particularly in the House of Representatives; and he knew how much was riding on it for him, politically and historically. He knew all of that. And he knew that it was going to be very tough to pass any legislation. So whether the employment—I think that was why it was difficult to decide whether the employment title should be in or not. It was controversial, had a history in Congress, unlike the public accommodations title, and was controversial with the Republicans. He knew he needed Republican support on a massive basis for a bill, and so that wasn't decided at the early meeting. It wasn't decided until really the last minute. And in

the last minute it was sort of compromised in that the employment section was not included in the bill, but the message endorsed the employment bill that had been reported out by the Labor Committee in the House of Representatives. He discussed it after the first meeting that we had on it. He discussed it there with Larry O'Brien and tried to get a judgment on whether or not it would be passed.

LEWIS: The employment title or the whole bill?

MARSHALL: No, the whole bill.

LEWIS: Yes.

MARSHALL: Any legislation. Senator Mansfield [Mike Mansfield] always thought we couldn't pass *any* civil rights legislation under a Democratic president because of the necessity of getting Republican

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votes that he thought you couldn't get without a Republican president asking for them. So nobody knew what would happen in Congress.

Well, then the President had meetings, which I wasn't at, with the congressional leaders. He had meetings, bipartisan meetings, with congressional leaders. And right from the outset Senator Dirksen [Everett M. Dirksen] was, in his mind, of great importance and was clearly of great importance to everybody. If you will remember, Senator Dirksen did not accept the notion of federal public accommodations statute at all at first.

LEWIS: For a long time.

MARSHALL: That's right. I wasn't at that meeting. The President was unable to persuade him to accept it at first. But he did accept the idea of legislation dealing with the other problems—voting, education, public facilities, federal programs—but he did not accept the public accommodations.

Meetings, I can't separate one very well one from another, but I remember that first meeting, and then I remember a final meeting on the message. And in between we had Tuscaloosa and so we had meetings on that too. And they are somewhat—the threads ran through. I mean we talked—they got jumbled. The last meeting on the legislation on his message was concerned principally still with the employment, as I said. The message was drafted at first, and it didn't say anything about employment. The President didn't accept that, so what was said was added really by him at a meeting where he went over this draft message with, I think, the same people: Nick, the Attorney General, from the Justice Department, me, and Larry and Ted Sorensen, Kenny. [Interruption]

LEWIS: What about the President's speech the night of the Tuscaloosa affair? Who worked on that? What do you know about the drafting of that

speech? Of course it was so directly related to the whole climate and the bill and the creation of the public opinion for the bill.

MARSHALL: Yes. We had a meeting with the President. I saw a good deal of the President during those weeks. We spent a good deal of time with him the day before Tuscaloosa and the day that happened discussing how to deal with it. Of course in the Oxford we at least had communications with Governor Barnett [Ross R. Barnett]; we knew what he was doing. In the case of Tuscaloosa we had no communication with Governor Wallace [George C. Wallace]. The Attorney General and I had gone to see him earlier in the spring down in Montgomery, but that had been a fruitless conversation as far as getting information was concerned. Our view was that he would give up and get out of there. And our view also was that he would do it in a way that did not lead to rioting, that he would preserve order, but we weren't sure.

LEWIS: What about Richmond Flowers, was he any help?

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MARSHALL: No. I mean he was all right, but he wasn't any help because he had no control over the situation. We, again, had had a great many people up here talk to a great many people down there. We had prepared a list of important businessmen particularly, to some extent political leaders in Alabama, and had an organized effort among the cabinet to have every one of them talked to from Roger Blough [Roger M. Blough] and the TCI people. I think there must have been about a hundred phone calls made by members of the cabinet to businessmen in Alabama during the two, three, four weeks before Tuscaloosa. These calls were made, again, by the Attorney General, Secretary McNamara, Secretary Dillon. Mostly those three but also to some extent Bill Wirtz and Governor Hodges.

LEWIS: Not by the President himself.

MARSHALL: I think the President also did, but I don't know who he called. I remember we had a meeting over there one Sunday in which we went over the.... I'm not sure everybody was there, but Cy Vance [Cyrus R. Vance] was there, and I think Bill Wirtz was there. I don't think McNamara was, but we went over the list and assigned it and organized and assigned names to people and mainly tried to avoid putting the burden on the President of having to call people up. But I think he may have called. Well, at any rate that had an effect. It had an effect on Wallace at least in that I think he promised so many people that there wouldn't be any violence that we were fairly confident that he would do everything that he could to prevent it and to conduct himself in a way that was designed to prevent it. So that accomplishment had been made. The day before Tuscaloosa when he was still going to stand in the doorway, as he did stand in the doorway, the main concern was to get that over with in a way that was dignified, and dignified for the country, dignified for the President, and was the least injurious to the country. We thought that in order to accomplish that it should be done quickly and done with the Alabama National Guard rather than anyone

else, and the President had to use that sort of force and that couldn't be done without that sort of force, if Wallace did stand in the doorway with all the state troopers, that Nick should go down there (and Nick did go down there), and we had it well organized. But we discussed the details of all this with President Kennedy. He participated on that occasion very much and in a way rather enjoyed it I think. Though he didn't like the situation at all he was interested in the details of it. And they were all gone over with him much more than at the time at Oxford. That planning and detailed decision was made with the President's full participation and in the White House in his office. It was at one of those meetings that we discussed the question whether or not—or when rather than whether—he should talk to the country about the racial problem and about the legislation. And the Attorney General.... Some of the people urged him not to.

LEWIS: Not to make any speech?

MARSHALL: Yes.

LEWIS: Who?

MARSHALL: I don't think Kenny O'Donnell wanted him to very much. And

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I don't think—I'm not sure, I don't think Ted Sorensen did.

LEWIS: Why?

MARSHALL: Well, they felt it would just involve him personally and that it would be politically disadvantageous...

LEWIS: Involve him personally in the legislation and the issue?

MARSHALL: ...in 1964. Well, he...

LEWIS: He was going to propose the legislation anyway.

MARSHALL: Yes, that's right. But to speak to the country on it as a moral issue, they thought that would involve him much more as a person and that it would lose him political support in 1964. I think that was in their minds and that was really the way it was put.

LEWIS: And the Attorney General?

MARSHALL: The Attorney General was very much in favor of speaking out to the country and telling them then, speaking out in moral terms. I don't think

the President—I really don't think he ever intended not to for a minute. He listened, he listened to the arguments against it, and of course Ted and Kenny, I think those two—I'm pretty sure I'm right, they spoke against it—they were giving the arguments against it. I don't know whether it was what they fully felt or not. But in any event, he listened to the arguments against it, but I think his question was just a question of when rather than whether. The Attorney General thought it ought to be done then, and he urged that on the President on the morning of Tuscaloosa, as I remember it—if it wasn't the morning, it was the afternoon before—in the President's office. I think Nick was already down in Tuscaloosa at that time.

Now, of course, whether he would do it after the confrontation with Wallace or not would depend on how it went. So it was a very last minute thing. It wasn't like a State of the Union message or something in which there was a lot of time and the occasion was set well in advance. I think the time, the television time, was requested only—it couldn't have been more than two hours or so before the speech was actually made.

LEWIS: In fact some of the speech was really extemporaneous, wasn't it?

MARSHALL: Some of the speech was extemporaneous, completely extemporaneous, and some of it was in a text. As a matter of fact, it was a very close question whether it was going to be all extemporaneous, except that the President had it in his mind of course, because the typing of the speech that was given was finished, I think, not more than three minutes before he went on television. And the President, it didn't phase him a bit, but I was in the Cabinet Room with the President and the Attorney General, no one else, and the speech was being typed in final

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form by Mrs. Lincoln [Evelyn N. Lincoln] or someone, but it wasn't there. And at three minutes of 8:00 or something, the President was making notes in longhand on a scratch pad and saying now, "Come on. Come on now, Burke, you must have some ideas." [Laughter] But he knew what he was going to say, and I guess it didn't make much difference whether it was typed or not. But it was a very, very close question whether the whole speech was going to be more or less extemporaneous. The last part of it was anyway.

LEWIS: That was a remarkable speech.

MARSHALL: Yes, it was. Even the Attorney General, who's not bothered by many things, was shaken by the President not having his prepared text. Almost as he had to leave to go into his office to give the speech.... [Interruption]

LEWIS: Now, Burke, what about the meetings in the White House that were held in or began in the month of June, 1963, with these community groups or rather different professions?

MARSHALL: That was part of the President's effort to get a consensus on this within the

country. It wasn't that he made his Tuscaloosa speech and introduced the legislation; there was a great deal of activity all at once during the month of June and part of July that was aimed at gaining a consensus. He met with all the congressional leaders, as I say. He also went out to Hawaii, spoke to the Conference of Mayors. I think that was before he proposed the legislation, as I remember, it was just shortly before—I don't mean he hadn't decided on it, but it was before he sent his message down to Congress.

And he wanted to meet with leaders from all segments of our society about this problem and they gave instructions that those meetings be set up. And they were. I think he met with 1,600 or 1,700 people in the course of three weeks maybe: lawyers, business groups, church groups, women's groups, labor, educators, most of the governors. I think that would be the list. At all of those meetings, except one, when he was out of the country, I think the Vice President [Lyndon B. Johnson] also attended.

LEWIS: I just was going to ask about that.

MARSHALL: And he spoke to them. [Interruption] The Vice President spoke to them, too. At the meeting with the business council, the Secretary of State [Dean Rusk] came and spoke to the business council. The Attorney General spoke at each of the meetings. Those meetings in my judgment had immense repercussions. We still, here in the Department of Justice and through the White House, have had continuing liaison with a group of lawyers, group of businessmen, group of women, and many, many church leaders in activity that was directed at this problem that never existed before, which resulted from President Kennedy's pleas to these people to take some responsibility.

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Now I think, in a way, the legislation that has been passed is a result of not only everything that has been done with congressmen and senators directly by President Kennedy and President Johnson and others working for them, but by particularly the church people who were stimulated and took this on as a moral issue and found a new role in society for themselves, really, as a result. I think it's too bad that the meetings weren't recorded. There was no transcript taken, and therefore what the President said and what the Vice President said, the Attorney General and other people—I think I spoke to the women—is not recorded. The President deliberately chose not to have a transcript taken even though he had a transcript taken of almost everything else that he said at a quasi-public meeting. And at other addresses there was always a White House reporter making a transcript. He didn't want to put anyone on the spot, and accordingly, in order to make them feel free to respond back to him, he had no transcript made at all. [Interruption]

LEWIS: I've been told that Vice President Johnson, as he was then, was extremely effective at those meetings, spoke in a rather emotional way of his own experience—Negroes he had known or who had worked for him and what they had run into in the way of discrimination. Is that true?

MARSHALL: I think he was very effective on occasion. Particularly I thought with the lawyers, you know, which you would not necessarily think would be his meat. I thought he was very effective, very good. As you say, he spoke out of his own experience, he spoke as a Southerner, and he spoke of it as just a question of what was right. And I remember particularly being impressed with his performance with the lawyers.

LEWIS: That leads me to ask generally, what was his role in this phase of the preparation of the legislation? Was he in on the meetings? What position did he take?

MARSHALL: Well, he was not in on all the meetings. Of course, he was consulted, the President did ask his views. Of course, his whole background and experience was such that... I'm trying to think if I heard the Vice President express his views to the President. I'm not sure.... I think I did. I think on one occasion the President and the Vice President talked about it, and I was there and I think the Attorney General was there. My best recollection is that the Vice President didn't think we could get any legislation, and his emphasis was on the difficulties. But he was very hesitant about pressing his views at all on the President or telling the President what to do. There was a rather formal relationship, I thought. And I don't think I could accurately say the Vice President urged any course very strongly except that I think he put a good deal of emphasis on the difficulty of getting any legislation. My impression would be that he probably wouldn't have asked for this legislation if he had had the decision to make.

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The Attorney General, on one occasion—I think it was after the President and the Vice President had talked; it may have been after that meeting I mentioned—the Attorney General told me to go over and see the Vice President and talk to him about the legislation and get what ideas that he wanted. I think the Vice President was hesitant about anything that he might think would be forcing his views on the President, on President Kennedy. In any event the Attorney General asked me to go to him and that he said he had some ideas. And I did go, and I talked to him about or he talked to me about a half an hour or maybe an hour. And in terms of the problem, as against what legislation is possible, you see, he confined himself with President Kennedy, I think, to answering questions President Kennedy put to him—Do you think we can get this? Do you think we can get that?—rather than expressing affirmatively his views on what he thought the President should do. In my conversation with the Vice President, I would say the message, what he wanted to convey to me really, was, I think, that he thought the problem, the racial problem is in terms of education, and he talked about educational efforts and jobs, the things that would be consistent with his emphasis since president on poverty and educational efforts, remedial education. He certainly didn't advocate asking for any legislation. I would say on the whole, to the extent his advice was given, it was discouraging advice, the difficulties of there being any legislation. And I don't think that his personal views at that time were that the legislation that was asked for was

necessarily what he would have done. I don't think he would have tried to get public accommodations legislation. I think he thought of the problem at that time in terms of the longer-range needs of the Negroes, and that he would have confined himself to that if it had been his decision rather than something that met, as the public accommodations title particularly does, with immediate needs.

So I conveyed that back to the Attorney General and I guess to President Kennedy and we talked about it. Yes, I remember telling President Kennedy too about it. And we talked about it briefly, but President Kennedy.... As I say, I don't think there was ever any doubt that he thought to have this issue resolved it had to be something that was in more than long-term needs of more education, more jobs for Negroes. Though on the job side, of course, he always saw that. And he agreed with the education needs.

[END OF INTERVIEW #5]

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