

Joseph F. Dolan Oral History Interview – JFK #2, 12/4/1964
Administrative Information

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Biographical Note

Dolan, Assistant Deputy Attorney General (1961-1965), discusses the federal judgeship appointment process, his involvement with the 1960 Citizens' for Kennedy-Johnson, and the civil rights issues of the 1960s, among other issues.

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Joseph F. Dolan—JFK #2

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Second of Two Oral History Interviews

with

Joseph F. Dolan

December 4, 1964
Washington D.C.

By Charles T. Morrissey

For the John F. Kennedy Library

DOLAN: One of the roles, which the Department of Justice plays in any presidential administration arises out of the fact that the Attorney General is the President's lawyer and more than a hundred years ago the custom arose under which the President consulted his lawyer as to whom he should appoint to the federal judiciary. Appointments to federal judgeships throughout the country are lifetime, with the advice and consent of the Senate. The Office of the Deputy Attorney General in the Department of Justice is the particular part of the department where the work is done on judicial recommendations. Recommendations are received from a wide variety of sources. They are received from the United States senators of the President's party and of the other political party. They are received from other federal judges on the bench, and from the Supreme Court justices. They're received from governors, they're received from local political party chairmen, both of the party in power and the other party. They're received from the candidates themselves, they're received from their daughters, their sons, and their mothers. And they come to the Senator for the state where the vacancy exists.

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Then they come to the President, or they come to the Department of Justice for the Attorney General. If they came to the President, during President Kennedy's Administration [John F. Kennedy], a reply was prepared, or if it seemed to the White House they wanted it

handled a little specially sometimes the letter itself would be sent to the Justice department for preparation of an appropriate reply by the Attorney General on behalf of the President or by the President himself.

In any event, whenever a recommendation is made anywhere to any place in the Executive Branch, White House and Justice department, a file is started on the candidate. That file is kept physically in the office of the Deputy Attorney General, and thereafter every other recommendation and other pertinent materials concerning that candidate are kept in the that file, after having been seen by the appropriate officials in the Department of Justice, who are in most instances the Deputy Attorney General and one of the assistant deputy attorneys General. In the case of President Kennedy's Administration, the Deputy Attorney General at the outset was Byron White [Byron R. White] until he became Justice of the Supreme Court. After he went on the Court, Nicholas Katzenbach [Nicholas deB. Katzenbach] succeeded him as deputy, and the Assistant Deputy Attorney General who fulfilled this function throughout President Kennedy's

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Administration was myself. The Attorney General himself would see recommendations physically by letter only if they were in a letter, which was being acknowledged by him. Then he would see the letter—as he signed the letter acknowledging it he would see the incoming letter. He would, of course, receive many recommendations orally as a result of his knowing people throughout the country and Senators would, in many instances, make their recommendations orally by a telephone call or call up and say I want an appointment to see the Attorney General. As a matter of fact, early in the Administration that was the most frequent reason a Senator would want to see the Attorney General, and the Attorney General's secretaries would call our office and say, Senator So-and-So wants an appointment to see the Attorney General. Is there a vacancy in his state? That would be the first surmise that would be made by his office, and then the next question would be: is it an appropriate time for the Attorney General to see him? And it almost always is, because if the Senator is of the same political party as the President his recommendation carries very, very much weight.

If the President does not see fit to follow the recommendation of the Senator he had a limited number of alternatives. One, he can do without—he can leave

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the judgeship vacant; two, he can attempt to persuade the Senator himself or through the Attorney General; three, he can contact and sort of stir up people back in the state to try to get the Senator to change his mind. The latter procedure is fraught with peril because Senators can have the feeling that if you want to persuade them you ought to persuade them, but you shouldn't go around end on them by trying to go back into the state and building a fire under them.

There's room for a lot of give and take. The amount of give and take in the process depends quite a bit on the Senator, his personality, his idea of his role in the selection of judges. Some senators who are not lawyers take a much less active role in making a

recommendation. Some senators will submit three or four names to the department and say, now you tell me which one you think is best and that's the fellow I'll recommend. Or some of them will say: you look over the list and you tell me what you think then I'll tell you who I like and not necessarily the one who is best in our judgment.

Under the Administration of President Truman [Harry S. Truman], when the deputy attorney general was Ross Malone of Roswell, New Mexico, who had been quite active in American Bar Association activities, and who was president of the American Bar Association prior to or subsequent to his

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being deputy attorney general, I don't recall which, a relationship was established between the Department of Justice and the American Bar Association. The Bar Association created a Standing Committee on the Federal Judiciary, consisting of eleven members, one from each of the eleven judicial circuits into which the federal court system is divided, and a chairman. Since 1961, there have been only eleven members—the chairman doesn't have to be a member of the committee, doesn't have to be a circuit member, as far as I know. In January, 1961, when President Kennedy came into office, the chairman was Bernard Segal [Bernard G. Segal] of Philadelphia, who was the member of the committee representing the Third Circuit, and he was succeeded in September of 1962 by Robert Meserve [Robert W. Meserve], who at the time he became chairman was the member of the committee from the First Circuit, New England. Mr. Meserve is a Boston lawyer. He stayed on the committee representing the First Circuit as well as being its chairman.

The relationship between the department and the A.B.A. [American Bar Association] at the time that President Eisenhower [Dwight D. Eisenhower] went out of office had two main divisions. The Association's Committee on the Judiciary gave its opinions on the qualifications of candidates on a formal basis and on an informal basis. In no instance did the Committee or the

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A.B.A. suggest names to the Justice department or to the President. The A.B.A. had wrestled with this question and had decided that their role could best be served in giving the opinion of the organized Bar to the President by not having their own candidates, but by giving the views of the organized bar on names given to them by the Department of Justice. At the outset, under President Truman, I don't think very much was done. The arrangement was started quite late in his Administration and didn't get into practice until President Eisenhower's Administration, really. At the outset of the relationship in 1953 the A.B.A. did not come into play, was not consulted, until after an F.B.I. investigation had been conducted. It was quickly learned by all concerned that it was quite a bit more difficult to get a true evaluation of what lawyers thought of a man to be federal judge after an F.B.I. investigation, because the lawyers tended to say, "Oh, you're not talking about a lawyer, you're talking about a judge," and that had a conscious and subconscious effect on their evaluation of a man and what they were willing to say about him. So gradually under President Eisenhower's Administration, the time at which the names were submitted by the Department of Justice to

the A.B.A. was moved up to the same time as the F.B.I. started its investigation, then later on it was moved up to an earlier point.

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The informal arrangement for reporting with the A.B.A. works as follows. The department sends to the chairman the name of a person under consideration for Federal judicial appointment with some identifying data. The chairman refers the candidate's name and the information to the member representing the judicial circuit in which the candidate practices. He will also refer the name to the member representing any other circuit where the candidate has practiced. Those members then proceed to conduct an investigation. Almost always they interview the candidate himself. They then contact a number of people sufficient in their own judgment to give them an evaluation of the professional qualifications, the reputation, character, judicial temperament, etc., all the qualities that go into a judge. In a routine case where there is no derogatory, questionable information, where everybody sort of gives the same evaluation of the man, that would usually mean between fifteen or twenty-five people would be interviewed. The people contacted will invariably include some or all of the federal judges in the District where the appointment is to be made, some judges of the Court of Appeals for the Circuit where the vacancy exists, especially judges on the Court of Appeals who were appointed from the state in which the vacancy exists. State court judges, state bar association

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officials, American Bar Association officials who live in the District where the candidate practices law, and then professional associates and lawyers who are known to the committee member. Naturally you tend to look to people you know rather than complete strangers when you are trying to get an evaluation of an individual. An additional advantage of going to people you know is that over a period of years you develop some evaluation of whether they are high markers or low markers and you know what kind of a tack to put into the reading to come out right.

The chairman of the committee received from the member representing the circuit in question a written report and an estimate by the member as to how he would rate that candidate if he were asked for a formal evaluation. The chairman of the A.B.A. committee then looks over this information. If he sees significant gaps, or if it raises questions in his mind, he goes back to the member who did the investigation and asks him to flesh it out, cover the bare spots. He then conducts several soundings of his own, one, two, three, depending on what he hears, in behind his own man, contacting different people, but basically to see if he hears the same kind of music. If he doesn't, he goes back to his man and they either both investigate or the committee member will have to go back and see more people. If he does hear

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the same tune, he phones me and gives the information to the Department of Justice orally. The understanding with the American Bar Association in effect when President Kennedy took office was that the information concerning informals would not be recorded in the Justice department files. It could be kept in a notebook by hand by the man who received it and ultimately, after it served its purpose, would be destroyed. All of the information is received on a confidential basis and it is extraordinarily important that the confidentiality of the sources and the nature of the information be maintained. When Mr. Meserve or his predecessor, Mr. Segal, give the information or an informal to me—or in rare instances it was given directly to the Deputy Attorney General—the Attorney General would be told. Once in a while Bernie would tell Bob about a particular fellow in whom Bob had a great interest and he couldn't get a hold of us, but he wouldn't go through the whole report.

The individuals who furnish the information to the A.B.A. are not identified to the Department of the Justice. They are identified by categories. For example, the report would read: contacted eighteen people, all the federal judges, two of the state Supreme Court judges, three former law partners, a present law associate, dean

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of a law school in the state, and five lawyers who have litigated with him and one lawyer who was associated with him over a period of time in some very complex litigation and here's the way they see him. Everybody says he is a terror for work, he had a drinking problem twenty years ago but he had licked it, or he was never an intellectual or a scholar, he's not the sort of fellow you will want to advance to the Court of Appeals, he likes to try cases, he seems to be fair, he can listen to both sides or an argument, etc.—various qualities which most lawyers think a judge must or should have.

Then the conclusion of the informal report is a statement—I think we'd rate him qualified or any one of the other four categories into which the A.B.A. classifies candidates that they analyze for the Justice department. The categories are "Not Qualified," "Qualified," "Well Qualified," "Exceptionally Well Qualified." That is an estimate because that's the opinion of two people. Subsequently, if we are more serious about the man and we want to move further ahead in the appointment process, and almost always at the same time, we start the F.B.I. appointment investigation—we ask for a formal evaluation of the qualifications of the candidate. It may be a day after the informal, or it may be a year after the informal.

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The chairman gets out of the information and he goes over it more carefully and this time he thinks about nine other people and what kinds of questions they're going to ask. He had enough the first time to satisfy the man in the circuit and him. Now he's going to say: "Have I covered everything? Oh no, Gene Bennett, the man from the Ninth Circuit, is always interested in this, and there're just not enough there. Now I know Gene Bennett and I know Gene Bennett is going to say, how can I evaluate that fellow unless I know thus and so?" So he goes back and fleshes out the report a little bit, or sometimes they don't need to.

The written report and the recommendation are then circulated among the members of the committee who vote upon it. If a period of time elapses, I think it is seven days now,

without their saying anything, it is assumed they concur, but I am told that they invariably do submit so that if they don't hear from a fellow they call up to find out if he is sick or not. They don't assume that he has concurred. But the burden is on them to indicate a disagreement and they do. Mr. Meserve and Mr. Segal would be much better authorities on the frequency of it but I know they do get involved from time to time in conferences and telephone calls to thresh out whether there should be more investigation.

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Sometimes difficult cases are discussed at their semiannual meeting. The committee meets in February or so of each year in New Orleans, just prior to the mid winter meeting of the American Bar Association. I guess it is New Orleans or Chicago, in alternate years. Then they meet generally on the Friday or Saturday prior to the annual convention of the American Bar Association, which is held in August in a different city each year.

The department under President Kennedy's Administration developed, in conjunction with A.B.A. Committee, a questionnaire designed to elicit information about the background, significant litigation, prominent court cases which had tried or been associated with the trial of, also information concerning health. We asked whether the person had ever been hospitalized for a period of longer than ten days and what the circumstances were. The A.B.A. committee and the department both are quite concerned that people recommended for appointment are healthy enough. They don't have to be athletes, but they have to be healthy enough to try cases, and one of the problems in judicial administration is always the judge who is just sick enough so that he can't be effective and not sick enough so that he thinks he should retire, even if it is generally accepted that he should. There is a statutory provision under which

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judges can be placed on senior judge status for disability. It has never been invoked. It has been used to persuade judges to go on senior judge status voluntarily—but it has never been invoked that I know of despite the fact that it probably should have.

We're also interested in anything in the candidates' backgrounds that might indicate a defect in character, which might reflect adversely on the President who stands behind the man one hundred percent when he sends his name up to the Senate, and any slight blot on the man's character or reputation is going to kick back on the President. You've got to think things through. In nine out of ten cases it is someone that the President doesn't know. More often than not he's never heard of him, and he's got to take him on the recommendation of someone, so it's a process that seems to us worthy of careful attention.

In addition to the information gathering by the A.B.A. to which we have access, there are two other ways in which we accumulate significant amounts of information concerning candidates for the judiciary. At the same time we give the name to the A.B.A. or, more often, prior to it, when we get a name here in the department of someone who seems to be a candidate of some stature, automatically anyone recommended by a Senator because

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before you turn a Senator down you've got to know something, you can't just say well Senator we just don't like the way he spells his name, you've got to have some pretty cogent reasons. Obviously the Senator thinks he's qualified, or he wouldn't recommend him. If you're going to say, Senator, the Department of Justice doesn't agree with you, and we would like you to suggest another name, you've got to be loaded. So you have to find out about the man. So we find out from our own sources. All of our Assistant Attorneys General were in private practice prior to coming into the government—most of them came in 1961. They got around the country, and many of us know lawyers from various parts of the country. Archie Cox [Archibald Cox] had been in the academic community; Nick Katzenbach had been in the academic community, he knew law school deans. There are around town, in other government agencies, positions which require men of discretion and ability, men who are lawyers from all over the country who are serving not as lawyers but as executives in the federal government, so that there is hardly a major city where you don't know of someone, who practiced law there, or knows of someone who practiced law there. We just fan out and ask do you know So-and-So? Do you know anybody that knows So-and-So? Do you know anybody that knows anybody that knows So-and-So? You get into

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multiple hearsay of all sorts, but you know more than you more than you knew when you started to ask, and then you try to weigh the information against other information you have received.

The Senators, if they think we're going to have some questions about the qualifications of the candidate, often will suggest names of people. They say if you don't think he's a good lawyer, or if you want to know if he's a good lawyer, you just ask So-and-So or I'll send you a list of people. When you get the list, the first thing you know about it is that these are the people that the Senator wants you to ask about the candidate and that in itself says something.

You can get your Martindale and Hubbell Legal Directory and look over the bar of the town, which are the larger law firms, if you have a fair sample, you can start asking people who are the leading lawyers. You can do it on the phone. In difficult cases we send a man into the community, someone from this office, sometimes myself, sometimes one of the other attorneys. Sometimes when we are pressed for time we've had three or four people in the judicial district simultaneously. We just ask. I myself will go into a community. Some people work on appointments, some people work blind. I prefer just to walk in. You go into a town and get

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the Martindale-Hubbell ad section, start down the list, walk into an office that looks like they do a lot of litigation work and ask who the litigation partner is and sit down and talk to him. Some of them are awfully suspicious, and one of the things you want to find out is who the other candidates are, because naturally you want to avoid asking them. But some of them will laugh and say, do you realize I was the campaign finance chairman for his opponent in the

last election? Or someone of them will have been the campaign finance chairman for his opponent in the last election and won't tell you, and you find that out later somewhere along the line. Or they say the Senator is a good friend of mine, if he recommended him you shouldn't go around asking. Sometimes you're doing it in a district where there is no Senator from the same party as the President.

In any event, you obtain useful information and you bring the matter to a boil, you bring the matter to a head. Usually it is difficult to get accurate information if you mention the name of only one person, though more often than that you have one person you're really more interested in than anyone else. You're trying A and you're going to run A and see whether you think he's qualified, and if you don't get A you're going to go back and get another name. Yet to do that you have to

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ask, you have to bounce him and his qualifications off against other people. This sometimes induces some confusion in the process, and rumors get around that So-and-So—you don't want to be cruel about it, get somebody mentioned around town as being about to be appointed to the judiciary when they really aren't. But usually there are a number of people who have been suggested. I don't think I've ever, I can't remember the time I ever had to take the name of someone who hadn't been mentioned by somebody. That's another way to get names to bounce it off when you're talking to fellows, to say oh, who's being mentioned for the judgeship, and sometimes they'll come up with a list of five people, only one of which you have in your files, and some of them are extraordinarily unrealistic. Sometimes they've gotten the message before you have and they know who number two, number three and number four are on the Senator's list, if you don't go for number one. So then you ask what sort of fellow is A, what sort of fellow is B and C and which do you think would be the better judge and why. And when you hear them compare—some people are effusive about everybody, some are critical about everybody—but when you hear them compare is when you start to develop significant information about why he prefers one person over another, and you can talk to twelve people a day,

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I think, and in two or three days you can talk to quite a few, and come out with a lot of information. As I say, we did that only when we have a good deal of difficulty. We did that probably on not more than five vacancies out of the one hundred and fifty or so.

MORRISSEY: Do you ever get any kickback from the Senator when he finds that you've been out asking questions?

DOLAN: I never had, but I would assume that the Attorney General has and thought that it was necessary to be done and that was part of the price—and if I had a kickback on someone that did this for me, I wouldn't tell him. If it seemed to indicate that he made some errors in judgment as to how he went about the process I'd try to suggest that—you want the man to run free, you don't want him to feel as if he has

that hot breath of someone on the back of his neck, and you have to shield him from that or else he doesn't get the job done as well.

I said we accumulated information ourselves on two bases. One if this inquiry that we make to other lawyers on the phone, orally or in person, on the spot inquiries; the other is through the appointment investigation which is conducted by the Federal Bureau of Investigation prior to any Presidential appointment. This is a very thorough full field investigation. They go back to where the fellow went to high school, where he went to college.

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They check his birth, citizenship, they speak to people where he has lived. They speak to associates. Usually they say he's being considered for a high federal office and what do you think of his character, reputation? Do you think he would be worthy appointee? Sometimes the agent will say a Presidential appointment. Almost always there is some inkling in the community as to why the investigation is underway, if it is a community where he practices. Sometimes it is rather mysterious when they go back to Alameda, California, where he hasn't been since 1933, and you know some people assume he must be in trouble and this is unfortunate. It is an invalid inference people sometimes draw from an F.B.I. agent coming around asking questions, although they try to do their best to disabuse people of it, by not saying this man is under investigation—they try to indicate it is for appointment. The F.B.I. investigation reports come over from the Bureau to this office and they are read and evaluated.

In addition we do a check through the Treasury department, Internal Revenue Service, as to whether a man has any tax problems in the past few years. If so wherein lies the truth? Has he done what he ought to do as a citizen? Did he pay his taxes? If he had a difference of opinion as to what his taxes were and

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there was an assessment or a penalty or something like that it doesn't make any difference as long as there was no culpability involved. We have to evaluate in making the recommendation. Not everyone that is recommended for appointment has a completely spotless record. Some of the people may have been convicted of some minor offense. You have to weigh it, when it occurred, what it was, the circumstances under which it occurred. A college prank arrest for stealing an automobile can be quite different from embezzlement of five dollars of a client's money. If grievances have been filed against an attorney and we hear of it we try to get to the bottom of it. In some states grievance proceedings are secret, and the consent of the attorney is necessary to get the information. In some cases we seek the consent of the attorney, we ask him for his explanation, sometimes we're satisfied, sometimes we aren't.

Ultimately, the decision is made to recommend one person for the vacancy to the President for appointment. At that point a nomination paper is prepared in this office and a letter from the Attorney General to the President, some biographical data to be used by the

White House press office in connection with an announcement that is made at the time the nomination or recess appointment is made, and then the papers go to the White House.

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Up to this point there's been no mention of the White House, except to say that the President makes the appointments. Well, the President has the power and that's realized by the Senators. The Senators have the power of advice and consent. The custom of the Senate is such that the power of the Senator, if he is of the same party as the President and the appointment is within his state, then his power is quite significant to such a point where I think the practice is the reverse of the Constitution. The appointment comes down to an appointment by the Senator with the advice and consent of the President rather than vice versa. The White House staff people and the President hear about vacancies sometimes before we do, they hear about candidates sometimes before we do, legislative liaison people from the White House at the Hill will pick up names from Senators who want to know how their recommendation is coming. They'll say I'm thinking about recommending a fellow and there is a dialogue between the White House and the Justice department on it. Sometimes, depending on what we think that attitude of the Senator is going to be, we will discuss with the White House the fact that we think we're going to turn his recommendation down, before we go back to the Senator. Sometimes we think we're going to turn it down and we don't. Sometimes the President will decide

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he wants to appoint the man anyway and he does. Sometimes when we go to the Senator, the Senator can point us to other people and persuade us that our judgment was erroneous. Sometimes we can persuade him that his judgment was erroneous. We tell any senator who asks us that they can do it however they want, but we have found from experience that it usually works out better for all concerned if this dialogue and consideration and evaluation is conducted in another place than the front page of the newspaper in his state. Some senators announce their recommendations, and in some parts of the country the story is carried as Senator So-and-So announced today the appointment of So-and-So and that can make for difficulties in a marginal case. It makes it harder for us to turn the Senator down because the Senator says his prestige is involved, and he's put it on the line, and we don't just plainly say, well, Senator *you* did that. We indicate to him that yes, that's right and we have found, Senator, that these things work better—I can think of a couple of deceased senators who did it habitually, and it just made things harder but generally they recognized it. There's one Senator who has had a recommendation pending with us since President Eisenhower's Administration and I don't think it has ever been in the paper. He sees fit to keep it to himself, to keep it

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from the press, and we never have agreed with him. He told me the other day he was going to submit another name to us—"but really, Joe, don't you think he's qualified?" This was after

the Justice department under Presidents Kennedy and Johnson [Lyndon B. Johnson] for four years, and under Eisenhower prior to that, had considered this individual for a number of vacancies, which had occurred.

In some cases, the American Bar Association will evaluate a candidate for judicial appointment “Not Qualified.” In such instances the department then has a rather unhappy situation facing it, of deciding whether or not to recommend to the President that he make the nomination and appointment despite the evaluation of the A.B.A. If we feel that he is qualified it is our responsibility to go ahead and recommend him anyway. The President has to weight and ration his A.B.A. “Not Qualified.” He wants to appoint nobody that he thinks is not qualified, but then you get on to the people he thinks are qualified or the Attorney General thinks are qualified and the A.B.A. disagrees. He’s got to be concerned with the effect on the public—political implications in the broader sense of the term political—of appointing somebody who is rated “Not Qualified” by the largest association of lawyers in the United States, a group that is generally regarded as speaking for the organized bar,

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so that it is only after considerable reflection that we go ahead with a name of someone rated “Not Qualified” by the A.B.A. If a Senator has recommended him and the Senator persists, there’s more chance that we would recommend him if we thought he was qualified and the A.B.A. didn’t. Sometimes we’ll think a fellow is qualified yet feel that it is not good for the President. He decided that ultimately, but we make the recommendation to him.

President Kennedy appointed seven judges who had been rated “Not Qualified” by the American Bar Association. In only one instance did the Association fight the nomination. That was the nomination of Irving Ben Cooper as the United States District Judge for the Southern District of New York, a state where you did not then have a senator of the President’s party. He had been recommended to the President and to us by a number of people including the chairman of the House Judiciary Committee, Mr. Emanuel Celler, congressman from New York. When he was given a recess appointment the initial reaction of the press was good—the *New York Times* carried a favorable editorial, although our original appointment investigation disclosed that some people didn’t think he was the best that they had ever seen on judicial temperament. He was given a “Not Qualified” by the A.B.A. prior to the time that he was nominated. I think we was nominated

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late, didn’t get confirmed, but there wasn’t anything untoward about that. We sent quite a few names up in 1961 late, with the knowledge that they probably couldn’t get confirmed but it would permit recess appointments, permit paying the judge during the period of the recess. Subsequent to his going on the bench with a recess appointment, the Bar Association of the city of New York happened on information I don’t think they had before, and we didn’t have before. They retained a lawyer and staff to do further investigation, and they presented to the Senate Judiciary Committee their reasons why they thought Judge Cooper should not be confirmed. A substantial number of lawyers and judges said that he was good and should be confirmed, and all but one of his colleagues on the Court of General Sessions, if I recall

correctly, the District Attorney of New York county [Frank S. Hogan], and probably most significant of all, the Chief Judge of the Southern District where he had sat as a recess appointee, wrote a letter to the committee and to the Deputy Attorney General that went into the committee record, saying that he had served quite well, quite satisfactorily as a recess appointee.

Judge Cooper was ultimately confirmed. It was not a happy experience for him, or for us, or for the American Bar Association. Everybody learned something

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from it, I think. At least Judge Cooper learned that the A.B.A. didn't think he was qualified. The A.B.A. learned that just because they thought a fellow wasn't qualified didn't mean he wouldn't be confirmed, and we learned, among other things, that it's not very pleasant to have hearings dragging on as to whether there was great doubt to whether or not someone the President nominated was worthy of the appointment. It wasn't anything about his integrity or his honesty or anything like that. The argument against his confirmation related almost exclusively to temperament. He had been a judge in a court where hundred of people were sentenced in two and three hour periods, and he called it turnstile justice in a speech that he made or an article that he wrote. He initiated some procedures which, for people who did not understand the court and did not understand what had been going on before he initiated the procedures, seemed highhanded and unjudicial, etc. He would assemble a number of defendants in front of him at the bench and say now all you defendants stand here, now where are your lawyers. Now, your lawyers stand over here. Now, where are your family members who are here on the sentences—now, all of you stand over here. This all sounds sort of ludicrous, but before this they didn't hear anybody, didn't ask anything, but just barged ahead

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and meted out sentences. Then he would give lectures to the defendants and their families. He would brook no giggling noise or anything. He would quickly have removed from the courtroom anybody who didn't seem to measure up to his standards of courtroom decorum. Apparently it happened fairly often because the people who were in the courtroom were not cognizant of what is appropriate behavior in the court, and he pushed the things through. He handled a very difficult job in the fashion that he deemed appropriate, and every once in a while he blew his stack and he would raise his voice and tell off the defendant or somebody else. I haven't heard of such conduct on his part since he's gone onto the bench in the Southern District of New York, but the matters of litigation are different, the defendants are different and the working conditions were different. In any event, it is a serious matter when you recommend to the President someone to be appointed by him, and the American Bar Association rates him "Not Qualified."

You asked me to mention also partisan political activity of judicial candidates prior to their appointment. It was quite rare that somebody would be up for consideration who was well known to those of us who had been in the President's campaign. It was so rare that people would make jokes about it, like when are we going

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to get somebody that helped us? That may have been a function of several things—one was age—it was quite a young group, which was involved in President Kennedy's campaign. Many of them were not at the age, in their late forties and early fifties, when they would be considered for judicial appointment. Those who were, many of them were chewed up and use up in other places. The President stole for himself, he took quite a number of people for himself, for example Byron White. A United States district court vacancy occurred in Colorado shortly after the President assumed office. If Byron White had not been a deputy attorney general, his name would have figured very prominently in it. He was named deputy attorney general, and his name didn't figure in speculation for the district judgeship at all for the simple reason that the people thought he's gone off to Washington, he's doing more important things, he's doing more exciting things, he doesn't want to retire to the relatively placid air of the bench for many, many years, and then after a year he surprised us by going up to the Supreme Court of the United States.

There are a number of lawyers around town in administrative positions who, had they stayed in their state, might well have become district judges. I can think of one Presidential appointee where the President

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said, "Offer it to him. I hope he turns it down, but offer it to him," and the fellow turned the appointment down. He said that he had come here and he thought he was doing exciting things and he didn't want to go on the bench right at that time, but he said can you hold it open for five years? He said I know I'm going to want it in a couple of years, but jokingly he said, I hope another one is going to come along. How old are those judges? That sort of thing.

Between 85% and 90% of President Kennedy's appointees were from his own political party. The percentage varies with the presidents in the Twentieth Century—from about 81% to 92% to 93%, but generally there are enough lawyers of quality in a particular state of each party, so that you can get a good man of either party and the tendency is, as it is regarded as a good position, the tendency of the Senator is to recommend somebody that has done something good for him, more often than not, somebody in his political party. The tendency of the President, if there is not senator, is to find someone that helped him in some way, whether he knew them personally or not. So there is a great force, naturally, that makes the President appoint from his party.

Usually when you look at the biography of the person under consideration you will find some political activity

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or association somewhere in his background, usually when he was a young fellow, or maybe he was in the state legislature. More often than not they are people who aren't completely removed from politics, but it is fairly unusual for them to have had a lot of recent political

activity. I suppose it may be partly that when they get up to the point that they are practicing and have the kind of practice that would attract a Senator or the President to want to recommend them for a federal judgeship their time is very, very valuable and they're not pushing doorbells anymore. Perhaps they're doing some work in connection with a finance committee or some behind the scenes work that doesn't show up. They're not the county chairman generally, because the county chairman has so darn much work to do it's so hard for him to practice enough law to get rated "Qualified" by the A.B.A.

When President Kennedy came in, in January, 1961, there were eleven vacancies in the federal judicial system. In May, 1961, the President signed into law a bill, the Omnibus Judgeship bill, creating seventy three additional judgeships. As a result of this fact, plus the additional vacancies, which occurred during the year, a very large number of people were appointed in 1961. There were sixty judges nominated and confirmed.

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In 1962 there were fifty five, and then in 1963 the number went down very significantly, by the end of 1962 we had cracked most of the backlog, and there were only sixteen nominated and confirmed in 1962. Twenty two were nominated and confirmed in 1964. The one hearing that I've mentioned is the hearing of Irving Ben Cooper. The other hearings were fairly routine.

The practice of the Senate is for the chairman of the Judiciary Committee to submit to each member of the committee a blue slip and also, I understand, the blue slip is sent to the senators from the state where the appointment is to be made regardless of the party. The slip indicates if they have an objection to the appointment, but the practice is the opposite. As is often the case in the Senate, the committee doesn't proceed until the slip is back. If they have no objection they mark no objection and send the slip back, if they have an objection they just keep the slip because if they have an objection the desired effect is produced. What happens if a Senator keeps a blue slip depends on who the senator is and what the other members of the Committee want to do about it and what the chairman wants to do about it. Generally it is just to resolve some question that the Senator had in his mind.

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If there are two senators from the President's party and a vacancy occurs in a state, generally the two Senators will have some rapport with one another, and they will get together before they make a recommendation. One will usually take the lead, one Senator will defer to the other. Maybe Senator A will make the recommendation this year and Senator B will make the recommendation for the next vacancy. Or sometimes the understanding is on a geographical basis where Senator A will recommend in the Northern District on judicial court vacancies, Senator B will recommend in the Southern District. On United States Attorneys, Senator B will recommend in the Northern District and Senator A will recommend for the Southern District. United States marshal, Senator A in the Northern, Senator B in the Southern. I can't recall a single judge where there were two Senators from the President's party that I could say he was more one Senator's man than the other. Maybe

I'd be wrong, but it always seemed that way, and almost always it was pretty clear when the question came up.

If the Senators from the state are not from the same party as the President, they are not consulted by the department in the early stages when we are seeking information. Sometimes they'll make a recommendation to us, for instance in New York, where we had a large

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number of vacancies and no democratic senators. We determined as a matter of policy that this was one of the places in the country where we could make effective appointments of persons of the opposite political party of the President. We went to the Senators and told them it was our intention to recommend some Republicans to the President and we would appreciate their advice. We did the same thing in Illinois, in Iowa, and in Kansas. But we didn't feel ourselves bound by the recommendation to the extent that we would if they were from the President's party, and the Senators didn't feel that way either. They knew they were making a recommendation that we would weight along with suggestions from other people. In some instances the people they suggested were recommended to the President, in others they weren't.

MORRISSEY: You remarked at the outset of this discussion that occasionally recommendations would come from the chairman of the opposition party.

DOLAN: From within the state. I don't recall any offhand from the Republican National Committee. Let's see—who was it? Maybe I would. I don't remember any from Dean Burch, but that's not President Kennedy's administration. Before that Morton—I don't remember. But state chairmen or local chairmen would recommend. The chairman here in the District, Carl Shipley [Carl I. Shipley], has made recommendations.

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Sometimes they say, if you're going to appoint a Republican we'd like So-and-So, sometimes they just make it.

MORRISSEY: In recommending people for judgeships to what extent was the ethnic or religious factor considered? For example, would there be a need to have a Catholic judge in some areas?

DOLAN: We never considered religion. Perhaps we were somewhat sensitive about it due to the fact that this was the Administration of the first Catholic president. Prior to the time of President Kennedy's Administration, the Department of Justice would be requested from time to time to say what the religious affiliation was of members of the federal judiciary. They had some figures that covered maybe half of the judiciary, they would say there were so many Catholics, so many

Protestants, and so many Jewish judges. The first I learned of it was when a letter came across my desk to some Senator saying in response to your request, the following is the religious composition of judges in the district courts. In some cases the source was *Who's Who in America*, in other cases there had been information given. Somebody had volunteered in the course of recommending him—sometimes people volunteered he was a prominent Catholic layman, or he belongs to some society where it is recognized that he is of a particular religion. That would be true of Catholics and the Knights of Columbus.

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MORRISSEY: Protestants and the Masonic Order?

DOLAN: Well no, because some Jewish people belong to the Masonic Order. A mason isn't a catholic, but it doesn't mean he is a protestant. An effort had been made, but it clearly couldn't be fully accurate. We desisted, and we just don't give out statistics like that. We may have retreated to the point where we took *Who's Who* and looked up the federal judges and had a letter that said *Who's Who in America*, which purports to be based solely on information furnished by the subjects of the biographies listed, their religious affiliations as follows.

Ethnic composition is a consideration in gross. If you're doing an adequate job in my opinion for a president, and you're making appointments over a four year period, it would not be well at the end of four years if someone got up and said in the course of the election campaign—he didn't appoint a single Jew to the bench, does that mean there is no Jewish lawyer qualified? Or he didn't appoint a single Italo-American. Maybe, the American Indian.... Well, you just say well, no one was suggested who seemed suitable, but it does seem unbelievable that you could have four years without appointing any Irish American to the judiciary, or any Italian name, or Jewish, or if you didn't appoint a single Negro, I think it would be regarded as somewhat remarkable. People

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wouldn't believe you if you said it was just a coincidence, if you said it just happened that way. So in my opinion you can't let it happen. You have to look and you have to be alert to the possibilities. Let's say Polish Americans—there aren't too many Polish lawyers in the United States. And of the Polish lawyers in the United states, there aren't too many who are in what you would call in New York that Wall Street law firms, in Denver, a 17th St. law firm. Because of the time when the Polish immigration wave hit this country and because of the economic opportunities that they had, only a small number of them were able to become professional men and business lawyers. Lawyers don't get to become business lawyers unless they have friends who are in business, who are business clients, so you also have very few Negro lawyers who have business clients except maybe in the funeral business, insurance business, and now it is beginning to expand, and the bank business. As economic opportunities have expanded to the ethnic groups, so have the kind and character of the practice of the lawyers who identify with it. So you bet we look for a Pole. At the same time you maintain your standards because if the Pole isn't qualified, in my opinion, that's worse

than appointing a W.A.S.P. [White Anglo-Saxon Protestant] or someone of unidentifiable ethnic origin because it points out and says, look—this guy

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is toady for the Poles. He is so anxious for the Polish vote that he goes out and appoints someone who isn't even qualified.

MORRISSEY: Would representatives of ethnic groups, religious groups, civil rights groups, civil liberties organizations, farm groups, labor unions, express an interest in judicial appointments?

DOLAN: Ethnic groups, yes; religious groups, I don't recall any. Civil rights groups—definitely. Farm groups—I don't recall any. In connection with the appointments made in the 5th Circuit, 4th Circuit, and parts of the 8th Circuit, where civil rights issues are a problem, that's an additional factor that has to be taken into consideration in making recommendations to the President. It matters whether or not, if the candidate is appointed, he would apply the law honestly and fairly as laid down by the Supreme Court and the Courts of Appeal. You make a determination as to what you think he'd do, based on what he had said and done in his life before, and how people estimated the other qualities he possessed. For such vacancies we also consult non-lawyers. That is the only instance I can think of where any systematic consultation is made with people who are not lawyers. Civil rights groups and other people who are cognizant of the issues involved are asked, sometimes through Burke

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Marshall, sometimes through other people, whether they think the man would oppose those laws. That's what it comes down to. You can't make the standard: does he belong to the N.A.A.C.P. ? Is he going to decide all civil rights cases in favor of the government? That's just as bad as saying, is he going to decide all main fraud cases in favor of the government? We like to win all our cases but once the recommendation is made and the appointment is made by the President, we're nothing. We're the biggest litigants the judge has in court, and we don't know any judges who have had any problems with knocking us down after they got on the bench in the civil rights area or in other areas.

MORRISSEY: What states are covered by the 5th Circuit?

DOLAN: Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, and the Canal Zone. The 8th Circuit: Arkansas, Missouri, Iowa, Minnesota, North and South Dakota, and Nebraska. 4th Circuit: South Carolina, North Carolina, Virginia, West Virginia, and Maryland. 6th Circuit: Tennessee, Kentucky could be a problem.

MORRISSEY: Take for instance the 5th Circuit. Wouldn't you have a tough problem

getting someone who would act responsibly as a judge particularly in regard to civil rights cases because obviously the political climate and political

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leadership in some of those states is unsympathetic to the civil rights movement.

DOLAN: Well, it's not simple. But the Federal Judges who were on the bench at the time of the Brown decision [Brown vs. the Board of Education] have upheld their oath of office. They haven't all decided the cases the way we'd like them to. Some of them have been reserved with a pretty fair degree of frequency in civil rights cases. It is difficult in Mississippi and Alabama to find a lawyer—you ask a civil rights group can they recommend someone who is strong on civil rights in Mississippi and they'll tell you no. Now how are you going to find a lawyer in Mississippi who has a substantial amount of practice of the nature and character that would warrant his consideration by the President of the United States for judicial appointment who has views on civil rights that are in accord with the view of the N.A.A.C.P. [National Association for the Advancement of Colored People]? Well, if his views on civil rights were in accord with the N.A.A.C.P. he wouldn't have any clients in Mississippi.

So you get people who are somewhere in between. In some instances we get people whose views are in accord with the sentiment in the community that is opposed to change, social change, and in some instances you get people with personal views that think the pace of change should be accelerated, that change should not be resisted.

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The obligation of the oath of office is to apply the law whether you like it or not, and the judge can have a disagreement with a particular statute but have an obligation to try a case under it and sentence a man. Just because he doesn't personally believe in capital punishment doesn't mean he doesn't have an obligation to sentence a man if the sentence is his to be executed. If his views on capital punishment are that strong he has got to disqualify himself, so that judges in a number of other areas do make decisions and act in other ways that aren't in accordance with their personal views.

Now when a judge decides against us in civil rights cases time after time then people says that's a bad appointment. We obviously aren't too happy about it, because we like to win our cases. We would say that no one can divine in advance how placing a robe on a man is going to change him—what it is going to do to him—and that's one of the reasons why we are supposed to be so careful about the evaluations and recommendations that are made to the President. That, coupled, with the fact that federal judicial appointments are made for life—you can't get out of your mistakes, you've got to live with them. Time will tell whether some of the people rated tops, exceptionally well qualified, by the A.B.A., have not tried as many cases as well, or are

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regarded as felicitously by the local bar as some of those who were regarded as quite marginal, barely qualified. Some judges who were rated barely qualified by the A.B.A. have turned out to be real workhorses and good judges. They are satisfactory. You can't get a single lawyer in the District to say anything bad about him. They say, give us another lawyer like Judge So-and-So. In another instance they'll say don't give us another judge like So-and-So, who was rated exceptionally well qualified because, they say, it went to his head, he won't listen, he won't work hard enough. When you are dealing in human qualities there is quite a bit of fallibility.

President Kennedy's personal involvement in particularly judgeships can best be gained from the interview with the Attorney General [Robert F. Kennedy]. I'm almost sure that almost all of his personal involvements were in conversations with Bob. I would, from time to time, have conversations with Ken O'Donnell [Kenneth P. O'Donnell] and he'd say, "he wants to know," or he'd say thus and so, or, "he wants to know why we aren't doing this." Sometimes Kenny would just ask when are we going to do this, or who are we thinking about, without indicating it was for the President. It was for his guidance and something that he might at some later time bring up with the President, or somebody was trying to see the President and Ken would try to make the determination

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whether it was somebody the President should see, or whether it was someone the President should not see.

I never called the President about judicial appointments or anything else. The President called me only about four or five times about judicial appointments. Generally not much of the substance—I recall once about Irving Ben Cooper. He was before the committee and the fight was on and there were rumors around that maybe the President was going to withdraw the nomination, and he talked about that. I don't know whether I was the only person he talked to, or whether there were thousands he talked to. He just wanted to know what the situation was, what I thought was indicated under the circumstances. On other occasions—it used to be times when the Attorney General or the Deputy were incommunicado, couldn't get a hold of them—and he'd just say, Joe, what about So-and-So? I remember once he said, "Senator So-and-So is coming through the door. Why can't I appoint his man?" I quickly answered, "You can, Mr. President, but—" and then I told him it would violate principles we had established. In this instance, it was a man who had reached his sixty-fourth birthday and we had determined we would not recommend anyone to him who had reached his sixty-fourth birthday.

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In this situation we were going along with the American Bar Association, which had determined they would rate as "Not Qualified" anyone who had reached his sixty fourth birthday. One of those seven "Not Qualifieds" that President Kennedy appointed was Judge Sarah Hughes [Sarah T. Hughes] in Texas—Dallas—and the reason she was rated "Not Qualified" was because she had reached her sixty fourth birthday. In another instance, the

A.B.A. had a rule that is if you had reached your sixtieth birthday but not your sixty fourth they would not rate you "Qualified." They would rate you "Well Qualified" or "Exceptionally Well Qualified," but if you were of such quality that they would have rated you "Qualified" if you were under sixty, they would compress you and push you back down to the "Not Qualified" because they thought that candidate had less time to ripen. Everybody agrees that it takes time for a judge to ripen, and that the best years of service from a judge are not his first. No matter how good man he is you get better service out of him a year or two after he is on the bench, not the year he starts out. Another one of the seven "Not Qualified" was a man who had reached his sixty third birthday who would have been marginal "Qualified-Not Qualified," right on the border. We never found out which side of the line he fell on because it was clear that the A.B.A. would not rate him

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"Well Qualified" so they rated him "Not Qualified." Another one of the seven "Not Qualified" involved a candidate who had been away from home for quite a long time, been back here in Washington, and the reports we got here were quite high from people who knew him and practiced with him and against him here in Washington, but they were quite unfavorable from back home. We decided in our judgment that some of the evaluation was based on the fact that they didn't want it to go to somebody that they regarded as not a hometown boy anymore. In spite of the fact that the A.B.A. rated him "Not Qualified," we recommended to the President that he appoint him, he did, and he has done a fine job. He has been recommended by more than one member of the Supreme Court, prior to his appointment.

MORRISSEY: Were you concerned with the ins and outs of the Omnibus Judgeship bill?

DOLAN: No, we did a little study—just took the study that the Judicial Conference of the United States had made, read it over, several read it over. We had a meeting on it involving the Attorney General, the Deputy Attorney General, one other lawyer and myself. We talked about what they had done, the amount of work that they had put into it, how much of it was their business, how much of it was our business, and decided that it was

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more their business than our business. The President sent up the bill, which encompassed the recommendations of the Judicial Conference. The Congress added a number, about four, which were not included in the Judicial Conference report. When asked our views on that, we deferred to the Judicial Conference, which we have done in all instances concerning creation of new circuits or dividing districts—bills of that sort that have come up since. Sometimes we come down a little bit on the negative side, just pointing out the costs that are involved for us. It costs money to have two districts in a state than to have one district. You have two United States Attorney who are top salary men, whereas in one district you have one United States Attorney and more assistants. You have to have two United States marshals. Then you

tend to get into twos in facilities. The court will sit in more places, obviously they are going to sit in two different places in two different districts so that it is more expensive. Then you have to weigh that against the geographical considerations that are involved in the circuits.

MORRISSEY: Did you have difficulty on occasions keeping your lines straight with members of the White House staff?

DOLAN: No, what do you mean?

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MORRISSEY: Well, from what you've said I can visualize occasions when members of the staff would become involved with not so much the choice but the timing of judicial appointments, and perhaps their activities would be carried out in a way whereby you would not be fully informed of what they were doing.

DOLAN: I don't think we were ever fully informed of what they were doing because they'd just tell us, I was talking to Senator So-and-So and he wants that judge right away, or boy, if you're going to turn that judge down, can't you wait until next week. They wouldn't bother to take the time, but the relationships between the people in the Justice department, who worked on judgeships and the people in the White House who worked with Congress were always quite free and easy and close. Kenny O'Donnell was the Attorney General's roommate at Harvard. He had been associated with the pre-convention campaign of President Kennedy, as had Byron White and myself. So had Larry O'Brien [Lawrence F. O'Brien]. I didn't know Mike Manatos [Mike N. Manatos], who handles legislative liaison with the Senate, prior to the time he assumed his position in the White House, but we quickly established a rapport. He is from Wyoming, we knew the same people, he had worked in Senator O'Mahoney's [Joseph Christopher O'Mahoney] office, I think, and he's very easy to work with. We never had any problems understanding their job, or their

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understanding our job. I never heard a Senator say, "Well, look, Mike said that appointment was going to come up next week." That would have just floored me. I would have been shocked. It never happened, although we never had any understanding that it wouldn't happen that way.

It may be partly a function of the fact that the Attorney General was the President's brother. This was a situation that had never existed before in American history. Maybe the Justice department's role—I'm sure it was different, but how much it was different from other Administrations you would have to glean from going and talking to people who were in judicial appointments then.

Judicial appointments can be run completely from the White House. They don't have to ask the Justice department at all, they can just have the F.B.I. start an investigation, they can type it, they have typewriters and paper over there, they can type nominations, the

President could say I don't think it is appropriate to get recommendations from the department where they are going to litigate. No President has for a hundred years, and I think everybody would be quite surprised because it has worked. I think it is going to continue because it has worked. I can't imagine a President who would change it. But it is a different situation when the

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President's brother is the Attorney General, and the people who are working on the appointments have worked closely in the past on something in which they are all deeply involved. There was a commitment to the welfare of John Kennedy on the part of everyone involved that is difficult to imagine if you're not involved in it. To think that Kenny O'Donnell or Larry O'Brien or Manatos or me or Bob or Byron would do something with a Senator that wasn't in the best interest of the President, that would never happen. I had conversations with people over there who would ask, "Are you letting the Bar Association run that place?" Or they'd ask, "What did the A.B.A. think of him?" and you'd say, "He'll probably turn out to be a "Not Qualified." Then they'd say, "Are you letting the A.B.A. run that place?" We'd say, "No, we're not, but we reckon with what they have to say, reckon very substantially."

MORRISSEY: Could you tell me about the appointment of Mr. White to the Supreme Court?

DOLAN: In late March or very early April of 1962 Justice Whittaker [Charles Evens Whittaker] advised the President of his intention to retire. This information was given to us just a few days before the decision was made to nominate Byron White. The Deputy Attorney General, who was involved in the process told me about the vacancy one morning

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and said we had to get cracking on this right away. It was obviously a very important thing, to give the President a range of choice. Byron said there were an awful lot of people who should be considered. Start out by having Nick do some work on looking over several Courts of Appeal judges on the quality of their work and opinions, and looking over some of these people who are logical—and well, we have a file right now—Supreme Court—and there are fifteen or twenty people today who are under current recommendation for appointment to the next vacancy to the Supreme Court.

So we pulled the files, that was the first thing we did, and we found the names of one or two people who were given substantial consideration who turned out to be pretty high caliber candidates. Then, a number of other names immediately came to Byron's mind and to the people that he talked to about it. Justices of State Supreme Courts, Courts of Appeals judges, and Byron said we also ought to consider district court judges too. No reason why the President shouldn't appoint a district judge to the Supreme Court. That went on for just about a day and Byron had to leave town. He went to Denver for a quarterly or semi-annual

meeting of the Board of Trustees of the Social Science Foundation of Denver University, of which he was a member. When he became deputy attorney

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General he retained two such associations back in his home state. One was that and the other was the Board of Trustees of the Aspen Institute, Aspen, Colorado.

When he left, he left instructions with me and I'm sure he had some conferences with the Attorney General. I don't know what they were—I wasn't present—about who we were thinking about. The Attorney General may have given him some names, I don't know who. I don't know what conversations he had with Nick, because I didn't have any with Nick but I knew that Nick was working on it. Nick was at that time Assistant Attorney General, Office of Legal Counsel, and had a number of lawyers under him, and I knew they were doing some work. Byron and I talked to the Solicitor General about it. We got into the field of academicians, law school professors. There were obviously a number of them around the country who had been mentioned in the past. When Byron was out west he called me and said now, what have you done on this? He said, look, you've got to go all the way around. You've got to run through all these fellows.

One of the people I contacted was Bernie Segal, chairman of the Federal Judiciary Committee of the A.B.A.—we went over every Court of Appeals, over every district, the law schools to some extent, and the State Supreme

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Courts. I recall Bernie saying somewhere in the course of the conversation, pretty early, saying well I can think of a couple right in your place, or I can think of one or two in your place. Anyway Byron's name got in and I said, "Yes, of course, that's what I think, but I don't have any judgment on that. Let's go on," and we went right on to other people. That conversation started in the late afternoon, then we had to break it up. He had to go to a meeting and I moved on home and we picked it up alter in the evening about 11:00 p.m. or so and it went through until about 3:00 a.m.

I spoke to the Attorney General the next morning and ran over the names with him that Bernie had mentioned, and that I had gleaned from other conversations, from the file, and Bob spoke in terms, which indicated very clearly that he had been doing things. He said, "I'm going to see the President in about forty-five minutes and I want you and Nick to come with me." We all got in the car and went over there and saw the President. The President said what about it. He spoke about the people under consideration. If he decided that day it didn't come out, I don't think he decided until the next day.

By the next afternoon, the pot was boiling pretty well and I estimated it was down to two people, one of them Byron. I had had another conversation with Leon

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Jaworski down in Texas and both of them had mentioned Byron's name. I mentioned it to him—I said some people are mentioning your name, and his response was, "Well, you tell

Bob I want to stay here.” I told the Attorney General that and I told him what I thought of it too.

Ultimately, that Friday afternoon, Byron’s name was submitted to the A.B.A. and they did their evaluation of him by telephone conference, and the appointment was announced by the President, I think at a press conference, at seven or eight that night. The appointment was well received. Some editorials came out—he was only forty two or whatever it was but generally they had high regard for the job he had done as deputy attorney general.

MORRISSEY: Could you tell me how you became involved in the Citizens for Kennedy-Johnson?

DOLAN: Byron asked me. Right after the Convention Byron and I both returned to Denver and went back to our law practices. We had one rather casual conversation in which I mentioned the fact that in his campaign I was sure, just as in the other presidential campaigns, there would be a volunteers group for people who wished to assist the candidate but not through the machinery of the regular democratic party, and that he was going to be tapped for that. He just laughed as he usually does.

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Several weeks later—I was just acting on speculation and analysis, I didn’t know anything—he was tapped for it.

After he had been back east for about a week he asked me to come back to meet Robert Kennedy and himself in New York, where Bob Kennedy was holding meetings with Reform New York political leaders. I just sat there and listened, just to sort of get the flavor of what was involved in trying to get a Citizens movement going, and after a day of that Fred Dutton [Frederick G. Dutton], who came in from California, who had done the same thing that I had, and Bob, and Byron and I went down to Philadelphia where the first of the series of regional meetings was held to kick off the campaign. In this meeting Robert Kennedy played a prominent role, as did Larry O’Brien and other local political leaders. It was a discussion on how to organize. Dutton then went on to California and campaigned there. I was left in Philadelphia and the traveling road show, which we called it, went on to four or five other places.

My role in Philadelphia and a number of other places was to try to help to get an organization started. There were a number of people in the Citizens for Kennedy-Johnson who served this function. It was split up pretty much by region. John Horne [John E. Horne], who had been with the Senate Small Business Committee, handled the Southern

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states; Harvey Poe handled Missouri, New Jersey, and several other large states. Dutton worked in the West and was the executive director of the committee under Byron White’s direction. Phil Kaiser [Philip M. Kaiser] handled Wisconsin and Iowa and a number of other

mid-western states. I myself worked in New York, Philadelphia, Ohio, Indiana, Illinois, and Michigan.

We were nothing more than catalysts, sort of the speck of dirt around which the raindrop falls. You would precipitate action by being in a city. You would go into a city and ask everybody concerned who should be the head of the Citizens group. You'd ask the regular leaders, you'd ask the reform leaders, you'd ask the Republicans for Kennedy and then a donnybrook would start. Sometimes it was quite routine, and everyone would agree on the same man. More often, A would tell you B was no good, B would tell you C was no good and C would tell you A was no good, or various degrees of the same thing. Then a choice had to be made by the local people, and from time to time Byron would get in to make a recommendation, or in extremely rare cases Bob Kennedy would come in and tell the leader, I think we ought to do this, we ought to do that.

After that initial round which lasted about three weeks, these same people and myself made other rounds,

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going around to see how the organizations doing—prodding, pushing. How can we help? What can be done? Nothing ever goes right, and when you think it's going out from headquarters you find it's not being received, when you get to the other end, and what you think is smooth on one end looks terrible on the other end. So we tried to work both ends against the middle. You'd be doing things from the National headquarters, which was in the Esso Building here in Washington. Then we'd put people out in the field; three or four men would go out and see what it looked like from the other end, then get on the phone and call in and ask the right people in Washington to get the right materials, to get the letter concerning a speaker which was supposed to have been answered three weeks ago, and that sort of thing.

The Citizens played some considerable role in some places where they were a substantial-size organization, in New York, Philadelphia, and Chicago, and in a number of small communities. In some cases there would be genuine non-partisan efforts by people who just hadn't been in politics before, and in others they were nothing more than the tent under which the out faction of the Democratic Party temporarily gathered while they tried to regain steam, try to prove to the Presidential candidate they could do him more good than the regular

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organization, and hope that he would assist them at some later time in getting control break.

MORRISSEY: Did this happen in many instances that you can remember?

DOLAN: I didn't follow it after the election, but we indicated very clearly to these people that they were on their own and we were just interested in the election of the President and the Vice President, and other problems for the future should be left to the future. Factional groups were frequently not very happy about this analysis, which the Kennedy people placed on the campaign. In some instances where

the political leadership was quite strong you would come on the scene to find that there had been a self-started Citizens for Kennedy-Johnson organization which by a strange coincidence was in a building that was controlled by the local political organization, or that the secretary was someone who had spent the last four years working as the secretary to the local political leader, so they were really captive organizations. Some of the political leaders regarded the Citizens as nothing more than potential future trouble, and would pick a chairman with a degree of care that was really extraordinary, with a greater degree of care than they would pick a personal physician, or maybe even a President of the United States. I can recall visiting a college town in upstate New

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York where the Citizens' chairman was under twenty-one, not a resident of the state, going to leave the state shortly after the election, and had been told not to worry his head about finances. The chairman of the country organization had told him he would furnish him all the material he needed and he would furnish him with space. The chairman did not tell the chairman of the Citizens that at that time there was a Citizens free allotment. In order to start the Citizens going, we gave a free allotment of materials to them right at the start. After that they were expected to buy their buttons, pamphlets and anything else. The country organizations were expected to buy all of their buttons, pamphlets, bumper strips, etc., and some of the more artful chairmen would just not tell the Citizens' chairman about the free allotment, but take it and give some of it to them as a great gesture of *noblesse oblige* [nobility obliges]. But everyone was interested in the same thing basically. The overall aim was the election of the President, and it worked out all right.

MORRISSEY: Do you want to move on to the election? Did you expect Kennedy to win the election?

DOLAN: Oh yes.

MORRISSEY: By a larger margin than he won by?

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DOLAN: Yes—not by the kind of margin President Johnson won in 1964. Whenever you're in a campaign you get emotionally involved, and when you are really emotionally involved like I was in that one, you tend to get carried away and you lost your judgment. I misgauged the anti-Catholic vote very substantially. I didn't hear about it when I travelled around the country. People didn't ring it up in the Citizens' contacts, and it came as quite a blow to me when I got to my home state eight days before the election and I started talking to people that I knew—whose past history I knew—and after I had been back there forty eight hours I knew there was substantial trouble in the area of people who normally voted Democratic. Say blue-collar workers who had come up to Colorado from the south during World War II to work in defense plants, who could be counted on to vote a solid democratic ticket. My daddy voted Democratic, my

granddaddy voted Democratic, we always vote Democratic. This time they stayed quiet, or when questioned offered various other poor arguments as to why they shouldn't vote for John Kennedy. When they did vote he ran very substantially behind the ticket in Denver and throughout the state. He lost the state by seventy or eight thousand votes.

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MORRISSEY: Did you expect him to carry the state before you went back shortly before the election?

DOLAN: Yes, yes, but I think it was generally agreed that the campaign took a downward turn in the last week or ten days. Eisenhower made several T.V. appearances. The second wave of religious feeling set in really close to the election. People started to get that hour of decision feeling when they get that hand out to touch the lever in the voting machine—a prejudice like that comes out more than it would show in the polls. The first wave of religious feeling had been stilled I think by Senator Kennedy's appearance before the ministers down in Houston. That stopped it from going like wildfire.

MORRISSEY: Would you attribute Kennedy's poor showing in the Rocky Mountain states to the anti-Catholic feeling?

DOLAN: Mostly. In addition, he always appeared to people out there as an Easterner, somewhat of an intellectual who dressed and talked like an Easterner, and the Nixon [Richard M. Nixon] people played on that despite the fact that Colorado hasn't much in common with California, fighting over water all the time. I would say it is fairly conservative country except for the time of the economic depression. Up until 1964 Colorado had gone Democratic only once in five elections. It went Democratic in '32 and '36, and then Republican, except in '48 when we went

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Democratic by just 27,000 votes. Idaho, Utah and Wyoming I would say are a little bit more conservative than Colorado.

MORRISSEY: Between the election and the inauguration what occupied your time?

DOLAN: Law business.

MOORRISSEY: How did you get back to Washington?

DOLAN: Well, Byron White indicated that he was going to go back. Byron went back and saw the President-elect and had a general discussion with him and the President-elect indicated publicly that he was going to ask Byron to participate in his Administration, some position not specified. Then later on, as I recall it

was fairly close to the inauguration, it was announced that he was going to pick his brother as Attorney General, and I didn't have the slightest doubt when that announcement was made but that Byron would be asked to be deputy attorney general and would accept. And after that he asked me to come back here with him and I did.

MORRISSEY: Let's talk about civil rights. How did you first become involved with it and how did it develop?

DOLAN: Civil rights in the Justice department is the role of the Civil Rights Division, which in the entire Administration of President Kennedy was under Burke Marshall, a former antitrust lawyer from Washington, D.C.

From time to

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time when a crisis arose the Attorney General would call on other personnel to assist, especially in the non-litigation aspects of civil rights, the executive branch responsibilities for which turned out to be many and varied in President Kennedy's Administration.

In the spring of 1961 the Attorney General sent down as the President's representative to Alabama his own Executive Assistant, John Seigenthaler, to observe and report back to him. And John, in May of 1961, was trying to go to the assistance of some girls on that Freedom Ride bus who were beaten up, and John himself was sapped from behind and left lying in the street for a considerable period of time. Then it appeared that local law and order were breaking down. Under federal statutes, if it appears that local officials are either unwilling or unable to maintain law and order, it is the responsibility of the federal government to do so. Because of that responsibility, the President directed that certain dispositions of civilian employees of the Justice department and some other departments that assisted us be made and about seven hundred and fifty special deputy marshals quickly were assembled in the middle district of Alabama, which includes Montgomery, which was the town that the Freedom Riders were going to on the day following the disorder in which Seigenthaler was hurt.

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The marshals were drawn from the Border Patrol, the Internal Revenue Service—Revenueers—from federal prison guards and the other deputy marshals in other parts of the country. Following Little Rock in 1956, the Department of Justice had instituted a riot-training program for its deputy marshals and other personnel as a result of which there were a number of deputy marshals who were trained in crowd control, riot prevention, etc. They were assembled there and sworn in as special deputies in that judicial district and Byron White, then Deputy Attorney General, Assistant Attorney General Oberdorfer [Louis F. Oberdorfer] of the Tax Division, and myself were sent down to Montgomery the Saturday afternoon that Seigenthaler was hurt and we were told to find a place for those people and see if we couldn't try to prevent trouble.

The forces assembled at Maxwell Field in a period of less than twenty-four hours. Deputy Attorney General White conferred with the Governor [John Malcolm Patterson], Dr. King [Martin Luther King, Jr.] and Dr. Abernathy [Ralph D. Abernathy] and a number of other civil rights leaders announced that they were going to appear at a church in Montgomery. The statements made by local law enforcement officials weren't assuring enough that we thought local law enforcement would handle the problem—as a result of that we placed a few marshals in a position where they could observe what was going on at the church. We had

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a communications set-up. Two two-way radio system communication with the base in Montgomery to cars downtown and as the evening developed, a crowd built up and local law enforcement officials didn't cope with it. We kept putting more and more men down there and finally when the crowd got out of hand and tried to storm the church the marshals stepped in and tear gas was used. While the matter was hanging in the balance the Governor brought the National Guard in. The Guard, together with the marshals and the local police, were able to bring the riot under control. This was the first occasion in President Kennedy's Administration that this statute was brought into play, not the last unfortunately.

Again in October of 1962, in connection with carrying out a court order in the Northern District of Mississippi concerning the admission of James Meredith [James Howard Meredith] to the University of Mississippi, the department found that local law enforcement officials were interfering with, rather than assisting, in carrying out the court order. Not that they had any obligation to carry out the court order, but they are not supposed to interfere with it. As a result of this, a similar force, this time consisting exclusively of Justice department personnel, was assembled at Millington Naval Air Station in Memphis. Here again there was a rather short time schedule.

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Meredith and a small group of marshals offered themselves at the University several times under Chief Marshal McShane [James J.P. McShane]. They were rebuffed. Discussions and negotiations were carried on by the Attorney General with the Governor [Ross R. Barnett] and University officials. Finally, on the Friday before the riot at Oxford, the Attorney General decided to assemble a substantial size group of marshals at Millington. Once again he sent Assistant Attorney General Oberdorfer and myself down to supervise the buildup, which involved bringing the men in and making arrangements with the military officials to see that they are housed and clothed, and then shaped up into units that could be deployed and used in law enforcement activities, supplementing or replacing local law enforcement.

On Sunday, in the early afternoon, I was sent down to Oxford by helicopter by the Attorney General, made arrangements with Colonel Birdsong [T.B. Birdsong] to bring the marshals onto the campus under an understanding the Governor had with the Attorney General and/or the President on the subject. We brought the marshals onto the campus and we were in agreement. That evening the riot ensued and after that the state police withdrew

and the riot waxed and thrived through the night until eventually federal troops were used. By the time the troops went

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on campus deputy attorney General Katzenbach had come down to Oxford directly from Washington to be in charge on the scene, along with Assistant Attorney General Schlei [Norbert A. Schlei] and First Assistant Harold Reis [Harold F. Reis] and a number of other Justice department lawyers who had no regular duties that were in any way, shape, or form connected with riot control or this sort of thing, but who had been brought in to assist in the many tasks that were involved in that sort of very *ad hoc* operation.

MORRISSEY: Where were you on the night of the riot?

DOLAN: In the Lyceum, the best place to be. I didn't have a friend in town that wasn't in the Lyceum. No, as a matter of fact we had four or five people down at the Post Office.

One of the real keys to an *ad hoc* operation of this kind of communications. You come into a strange area, you have to move around, you can't get at the phones, you're in a hostile land, and we've always flied quite a bit on radio communications, which involves setting up a base radio someplace. When we were moving into Oxford we didn't know if we would be welcome on the campus. We picked a couple of potential places where you could get some gain, get some altitude for an aerial, but we never did get to put on in. We picked federal property, a Post Office. Then Friday or Saturday,

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just as soon as we made the decision to go in there, we put a couple of men in and put the base radio in the Post Office, and they installed themselves in the basement. But everybody else who was with the Justice department was out at the Lyceum, and a number of them in a very heroic fashion went back and forth to the airport from the Lyceum to bring in more supplies in the form of tear gas and that sort of thing. Well, that's what it was—just tear gas during the evening. John Doar [John M. Doar] was a fellow who was connected with the Civil Rights Division who was there from the very start of the trouble. He flew in with Meredith, and had been involved in handling the litigation, as well, before that.

Special forces of marshals were also needed to carry out a court orders in the South in Alabama in September, 1963. I am mentioning just the ones that I know about personally and was involved in. There were others, which I was not involved in. In September, 1963, when the Birmingham public schools were desegregated, two students were put in a high school, two in a grade school, and one student in another high school. There were moderate sized disorders, which local police did handle. We have very small forces of marshals there, available just to be a cadre in case further trouble did develop, and we maintained a loose surveillance of the situation.

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We were ready to step in if the children were attacked and their lives were endangered. The disorders that did occur were handled by the local police.

MORRISSEY: Do you have any recollections of any specific meetings with President Kennedy or any specific conversations with him that would be worth putting on this tape?

DOLAN: No, the only meeting involving a matter of substance, which I had with him when he was a president was the meeting concerning the Supreme Court vacancy to which Byron White was appointed. His dealings with the Justice department were, I think, in person principally with his brother, the Attorney General, the Deputy Attorney General, Byron White, and with Burke Marshall. Those dealings were incessant, I would say. From time to time when the Attorney General and the Deputy Attorney General weren't available he'd call up and ask, "Joe, what about this?" "What about that?" Usually it was the question of the status of a vacancy on a judgeship—what should be done about a nomination that was pending where there was opposition? Should we stay with it or not? I can recall his calling to inquire about an order that the Immigration and Naturalization Service had put out restricting some Cubans to Dad County after they had been apprehended trying to get down into Cuba. Those conversations were always pleasant and always brief.

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He was an awfully busy fellow. While he was never curt, we knew one another since 1956 and he just flat out said what he wanted to know and I just flat out answered him or told him I didn't know and I'd get the information back to him as quickly as possible.

MORRISSEY: Going back to 1956, do you know why Senator Kennedy, at that time, took such an interest in opposing the reforms which were proposed for the Electoral College?

DOLAN: Well, they weren't reforms.

MORRISSEY: Some call them reforms—changes.

DOLAN: Well, at that time the principal proposals were sponsored by Mundt [Karl E. Mundt], Lodge [Henry Cabot Lodge], and Kefauver [Estes Kefauver]. One proposal was a winner-take-all on a popular vote basis nationwide. That is a laudable ambition. It's like saying there shouldn't be any sin in the country. You can sound like a reformer proposing it and you can feel safe that you're never going to have to look for a new platform; you're always going to be able to run on the same platform because it's never going to happen. But when you get down to the realm of the possible, there was some steam behind the Mundt proposal, which would have proportioned the electoral vote of each state to the number of votes which a candidate received in that state,

rather than the present basis of winner-take-all in each state where all the electoral votes go to the candidate with a plurality of votes in that state.

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Senator Kennedy had been a student of American history and he represented a large state. He recognized the industrial nature of our society and I think he saw that such change would have given an inordinate amount of influence to the less populous parts of the country. Most of the large state senators ended up, except Lodge, with the same conclusions that he had. Some of the liberal Democrats found the idea of change fetching because, lord knows, Electoral College reform is needed and it is very easy to get carried away and be for a specific proposal without really thinking it through to its ultimate long range effects. He ended up favoring a moderate change, which would have abolished the Electoral College but would have retained the electoral vote system. Abolish the anachronism of the individual electors but yet retain the system. I've always been mystified by the people who claim that it is logical to say that because say Goldwater [Barry M. Goldwater] got 40% of the votes of Colorado in the last election he should get 40% of the electoral votes. My answer is, should he be president 40% of the time? You have to cut it off at some level. You can cut it off at the national level, or that state level. Georgia used to cut it off at the county unit system. The country has started, endured, and is doing all right

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with the electoral college vote system based on states, and the then Senator Kennedy concluded it ought to remain that way.

MORRISSEY: What prompted his interest in lobbying activities and campaign practices?

DOLAN: You'll have to ask Lee White [Lee C. White], who worked with him. I didn't have any contact with him until the interest had started. He had been assigned to a committee, Reorganization Subcommittee of Senate Government Operations, to which such legislation would naturally go and it might well have been that Lee White walked in and said, "Here's a bill. Somebody put in a bill about lobbying. What do you think about lobbying?" That's another area where everyone recognized something ought to be done. Finally something was done in '46, and it was more satisfactory than what preceded it, but quite unsatisfactory. He endeavored to do something about it, but did not succeed.

MORRISSEY: I don't have any more questions.

DOLAN: Fine.

MORRISSEY: Thank you very much.

[END OF INTERVIEW #2]

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