

INTERVIEWEE: EVERETT DIRKSEN (Tape 1)

INTERVIEWER: JOE B. FRANTZ

March 21, 1969

F: This is an interview with Senator Everett Dirksen in his office in the Capitol. The interviewer is Joe B. Frantz; March 21, 1969.

Senator Dirksen, you've had a long career associated with Mr. Johnson that goes back a third of a century, both in the House and the Senate and then during his Vice Presidency and Presidency, and I thought we would approach issues in this, and take them sort of one at a time and bring them through. It seems to me a good issue, since you were one of the pioneers, is the issue of federal aid to education, and so I'm going to let you be narrative, ask questions as they seem pertinent.

D: I recall very well when the matter of aid to public schools began to gather some momentum. As it did, it brought certain fears and apprehensions to the people, and mainly because they feared that the federal government might move in and take charge of the curricula of our public schools. That was the element. I think, that frightened them most; that's why they were reluctant, of course, to give any support or endorsement to that kind of a program. While thinking about it, it occurred to me that surely something could be written into the law, some inhibition could be fashioned whereby that danger of moving in on public school curricula could be avoided, and at the same time make support available to public schools, knowing that in many areas they had to have it if they were going to carry on a responsible course of education.

I think it must be generally known that there are lots of schools, and that's true in the poorer areas of the country, whereby these schools are simply not up to standard. The penalty must perforce then fall upon the children. Now it's equally true, I think, that you find in some areas, not so much now as then, but areas where teachers were not quite equal to their responsibilities as teachers. On further discussion of the matter Congressman Randolph and I got heads together--

F: That's Jennings Randolph?

D: That's correct. That's Jennings Randolph of West Virginia. And we sought to contrive something that might mollify these fears and that would have sufficient vote appeal to secure the approval of a program of that kind in the House of Representatives. That's when it began and we pushed a little now and we pushed a little then. As time went on, of course, outside organizations began to put their weight behind some kind of an aid program to our schools. This too gathered momentum and today, of course, it has eventuated in tremendous sums being made available to schools at nearly every level in the country.

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- F: School business is a booming business. Do you have any clear memory of when Congressman Johnson--Senator Johnson--Vice President Johnson--at what area in his career he became interested?
- D: Well, I fancy it was pretty nearly back that far because he was a very active member in the House of Representatives, and I know he took things in to stride and interested himself in all of these activities that in his judgment were sound and in the interest of our broad general welfare.
- F: Well, now then the real breakthrough came after he was President, which was sort of a fruition of what you'd been working for for better than two decades.
- D: That's correct.
- F: It must give you a certain trust in patience and persistency.
- D: Well, it's a testimony to the fact that an idea takes a long time in its incubation and its ultimate growth. I think Chauncey Depew, celebrated raconteur from New York, and lawyer and one-time Senator once made the observation that it took seventy-five years for an idea to insinuate itself into the complete consciousness of a country and eventuate in results. Now this didn't take quite that long--
- F: Well, we move faster now.
- D: Yes, we do, but it took quite a little time before this result was achieved.
- F: You look then on one of the functions of a Congressman is not just to legislate or to represent, but to educate.
- D: Yes, and maybe we can add to that, to innovate.
- F: Mr. Eisenhower, as President, tried to put through an aid-to-education bill without success. Mr. Kennedy tried, too. Why do you think that it finally came through then under Mr. Johnson?
- D: Well, you see that fear that I alluded to was still rather heavy upon the country. Anybody who went home to make an accounting to his constituents and to get some idea of how they felt could detect that at once. But I remember it even better, I think, from the vast amount of mail that we got on the subject. "Please do not let the federal government control our schools." And probably not the least important factor by any means was the fact that in those early days you had a good deal of commotion about the Communist menace, about its getting into the faculties of the country and that the children under controlled education would then be exposed to these rather alien doctrines. That added

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rather richly to the fears of the country and in consequence it stuck on for a long time, but you have a good many organizations in the country that had begun to flower into influence, as it were. There was the Parent and Teacher's Association, there's a National Education Association, and others, and they undertook to pitch rather vigorously for what they thought would be helpful and enriching to our schools, and little by little these fears were dissipated and today we have a tremendous amount of legislation and appropriated funds that are available to our school systems.

F: How did you safeguard the public against the government controlling the curriculum?

D: Well, at one time in the first bills, of course, it was so very expressly written into the bills. Now, of course, you can write some fine and fancy language in a legislative enactment, but that doesn't necessarily mean that it is going to be carried out. But I think the fact that people were rather reluctant at first also made them vigilant and it developed a greater interest at the local level. They were going to be sure of keeping their schools under surveillance to make sure that these fears that they entertained were not about to be translated into reality.

F: Did you work directly with President Johnson on the bill that was passed in his Administration?

D: Yes.

F: Can you recall some of the contacts you had and the gist of the discussions?

D: Well, I was not on the committee on education and in consequence, of course, my interest was a collateral one, but I visited with the President so much that this was only one item in ever so many that were constantly parading across the legislative scene, and so whenever a measure was before us, whether it was an appropriation bill or an authorization bill or an extension of the federal government's interest in the school system, that have a good many organizations in the country that had begun to flower into influence, as it were. There was the Parent and Teacher's Association, there's a National Education Association, and others, and they undertook to pitch rather vigorously for what they thought would be helpful and enriching to our schools, and little by little these fears were dissipated and today we have a tremendous amount of legislation and appropriated funds that are available to our school systems.

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F: You worked, of course, with Mr. Johnson in both Congress and the Senate. Were your relations usually cooperative; did you collide often? You both were leaders of different parties.

D: Well, when you use the word collide--

F: Maybe a little strong.

D: Yes, I think so. Because we took precious care to avoid a real collision, but the fact of the matter is that it could happen in his office or it could happen right where you are now. He would come to this office, or I would go to his. We would discuss schedules, whatever there was to be taken up, or whatever was before the Senate at the time, or whatever he as the Majority Leader contemplated taking up at some immediately future time. In those discussions, of course, you had to deal with the various pieces of legislation that came out of committee. Now he may have had a theory about it, how to handle it, how much time to devote to it, and other pertinent matters. Well, it could be that I could concur and agree, but on the other hand it could be that I didn't concur, and then I'd have to state a dissenting view. That was not necessarily an overall dissent against the legislation, but it could have been in its handling, it could have been some item in the legislation, that we would discuss. Now, of course, two men approaching their responsibilities seriously, the Majority Leader, responsible for legislation and the opposition leader, if they are sufficiently dedicated to a cause and with this disagreement in mind, can really talk to each other with good, stout, Texas language, if I could call it that. And we expressed ourselves very freely.

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But I want to add a thought here. We always agreed that the Senate was a two-way street. We agreed always that it had to be a viable instrument. It had to function for the interest of the country, and no matter how hard-bitten we may seem at the time, and sit across the desk from each other and indulge harsh language, but always this overriding consideration was there. Well, we have to make it work somehow. And we have to take action that we think is agreeable to, and in the interest of, the country. And out of that broad principle we always manage somehow to get things done.

F: Did either of you ever accuse the other one of playing politics in the sense that you obstructed for the sheer sake of being on the other side?

D: Oh, definitely so. Because if it suited his purpose, he very freely expressed himself, and if it suited my purpose I expressed myself also. But that didn't mean that we let tempers rise to that intense degree of heat where it threw us off track.

F: You were somewhat like contending attorneys who go off to lunch together when the trial's over?

D: Right.

F: You have been for some time on the Judiciary Committee.

D: Yes, a great many years.

F: And you have been on the Sub-committee on Constitutional Amendments.

D: That's correct.

F: And you have this amendment that has been pending for some time regarding the courts, and I wondered if you would like to talk a little bit about what you have tried to accomplish there and also if you had any relationship with Mr. Johnson on this?

D: I presume you mean the one-man, one-vote?

F: That's right.

D: Yes, my interest came about from the fact that I thought this was an unjustifiable invasion of the legislative domain by the judiciary, meaning the high court in the country. It's what Justice Frankfurter once referred to as the "legislative thicket" and that the court had no business venturing in that domain. Well, they certainly did venture in that domain in connection with a so-called one-man one-vote decision; that's some years ago. There were a series of cases at the time and the court came to just about the same conclusion, that there had to be a parity or an equality of the voting impact by each individual and it

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had to be the same. And the only way you could bring that about was that in the selection of legislative bodies like the House and the Senate and the state legislature, they had to be selected on the basis of population and that other factors, no matter how pertinent, no matter how relevant or important they may seem, could be taken into account. Well, of course, when that decision came down, the Court also insisted that action with reasonable speed be developed, so that this change could be brought about. You see, you might, in a given case, say that you could select the lower house in a state legislature on a one-man, one-vote basis, and in the selection of the state senate they tried to give proper weight to the rural areas as against the metropolitan areas, or the economic interest of a group. And that would be notably true in a state that was predominantly agricultural. There are other factors that would enter into it, and in so many cases the legislatures took account of it in making that determination and it would say, well, so many votes would be here and so many over there, and that gave everybody a very proper representation in at least one branch. The courts swept that all away and said it had to be one man and one vote. Now the reason I got interested was I thought this was an unwarranted intrusion by the Court, not upon the legislature but upon the people. It was for the people of the state through their legislature to say what they wanted in that respect and not the Supreme Court of the United States.

F: Did Mr. Johnson show any interest in this amendment?

D: He was interested to a very considerable degree.

F: Did he talk with you on it?

D: Oh, yes, we talked about it.

F: Do you recall the gist of some of your conversations, where he stood?

D: Not particularly because it wasn't a big issue in Texas at the time whereas in Illinois it was, in Tennessee it was, and elsewhere. Strangely enough it has been a continuing issue. It's an issue right now. On the telephone I talked to the committee leaders of the appropriate committees in the legislature in Iowa and right now the matter is up before the legislature in Maryland. There are still other legislatures. Because we tried to cure the result of the Supreme Court decision by way of a constitutional amendment. And then later by way of a constitutional convention. Actually this matter did come to a vote in the Senate and while we got a very substantial majority we did not get the necessary two-thirds. We then hit upon this other constitutional device, namely that the states can call a constitutional convention, or petition the Congress so to do. Now it would take three-fourths of the states to do it, and we got all except two. Now we're still fighting for those two, and if we should get them, then of course Congress has to pass upon the sufficiency of the petitions that have been filed by the various states and then make a determination about calling such a convention. If it were ever done, it would be the first time in the history of the Republic

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that there has been a national constitutional convention. Now there's some fear about it, if you do have a convention people will come in with all manner of things, and yet I'm of the opinion that Congress, if it wants to, can make an endeavor to prescribe a limitation. Now I've had calls from all over the country at one time or another from some very, very prominent citizens with respect to selection of Supreme Court justices, for example, and whether or not the Constitution ought to be amended with respect to the method by which this is done. But there are other things they'd like to see considered also. You'd have to exercise some restraint and make some endeavor to see that it's not as wide open as a forty acre field, and to be as selective about it as possible.

F: Now, in your position on the judiciary committee you've sat on the appointment of judges.

D: Yes.

F: Have you seen any variation from the traditional appointments in Mr. Johnson's appointments to the Court?

D: No, not necessarily. The Constitution is very plain and very simple; it simply says that the President shall appoint, with the advice of the Senate, the judges of our Court. That goes for the high court and that goes for the lowest echelon of federal judges.

F: Did the President ever talk with you about the Fortas appointment?

D: Oh, yes, we talked about it a great deal. As a matter of fact the very day that he received the letter of intending retirement by Chief Justice Warren he called me. I think it was probably mid-afternoon. He showed me the letter, it was only one sentence, that it was his intention to retire.

F: Do you think part of his trouble with the Fortas appointment was the sort of loose wording in Chief Justice Warren's letter, which didn't make it clear whether he had retired or was going to.

D: That was one thing. Of course, it was very freely ventilated on the Senate floor, but there were other considerations as well that had developed, some important maybe and some not so important. But it's amazing how a little thing can be terribly magnified and that's notably true when suddenly the country is galvanized into action.

F: Do you think there was any element of retaliation in some of the adverse vote on Justice Fortas for the fact that Mr. Johnson and others were instrumental in turning down [Adm.] Lewis [L.] Strauss for Commerce a decade before?

D: I heard it mentioned once or twice, but actually I do not believe that it entered into this matter at all. You see, that was a long time back, and I remember it very, very well, but it

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was no compelling factor at all.

F: You would also, I would guess, discount any anti-Semitism?

D: I would. Those terms you know can come so quickly to the top, and they do so without any real warrant or justification.

F: I'm trying to lay to rest some things that people may pick up years from now.

D: Yes, but in odd corners sometimes you heard it, but that's as far as it went.

F: Why do you think they turned down Mr. Fortas?

D: Well, they made a great point, for instance, of the seminar at the Law School at American University. Oddly enough I suppose most people if they saw any account of it had forgotten it. But I believe a clerk to a Senator saw it in the press and it was only a small squib, and clipped it out and mounted it no doubt in his notebook. Then when his nomination came along he happened to refresh the Senator on it and then they began to explore the man. But it took a rather interesting turn. You see, after the preliminary discussion they finally asked the Dean of the Law School to come before the committee and he spoke very freely about it and said it would cost about \$30,000 to put on that kind of seminar. He thought it was good to expose law students to people on the high court and that has been going on for years. And as a practice certainly it cannot be criticized, but what happened here was that first of all it required money to do it; by that I mean money to stage a seminar course, because it was a whole series of lectures.

Well, then, the question was since the Dean did not have money available out of school funds, where to get the money? So he went to Justice Fortas' former law partner, Paul Porter, and everybody knows Paul Porter; he's a man of substance, integrity, and a very sound lawyer who has a lot of contacts. Well, he tried to think about some people who could be helpful, and he quickly thought of about five different people, I think they were all New Yorkers, and one agreed to give \$5,000, or four agreed to give \$5,000, one agreed to give \$10,000. Well, there was the \$30,000. That's all that was needed. Well, they read a lot of significance into the fact that Justice Fortas' law partner interested himself in getting this money and then later, of course, it was testified that the fee for the lectures to the Justice was \$15,000, half of that sum. Well, there are those who thought that that was a rather untoward thing and it shouldn't have happened and pretty soon it began to scream from the front pages.

Then there was the incident, of course, of those cases involving pornographic literature. Now I'm sure that none of the Justices ever saw those films or ever saw those magazines and they struck down these decisions out in California with what was known as a per curiam decision through the court. It wasn't even written and it might quickly have

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passed with a transient breeze until some representative of some organization like the Legion of Decency came to testify. And he brought a few films along. He said, "I want to give the Judiciary Committee a private showing." I don't know how many saw those films; I didn't see them. I didn't want to see them. But a good many did and then other Senators saw them, and one or two Senators quickly became real reformer crusaders, and they lured other Senators to go over there and take a look. Now I assume that the films must have been as bad as they were described, but you can imagine what that impact is, and that suddenly those decisions were nullified.

Now this whole business prompted me to drop a bill in the hopper with respect to the findings of a jury in a case of this kind, whether it be pornographic literature or films, that the finding of the jury should be final and couldn't be impeached by the court on appeal. I still think that would make very good law and that bill is still in the hopper. But that was all collateral to this thing, but you can readily imagine the impact upon a nomination that is before you, of one who is on the Court and who has been appointed to become the Chief Justice.

F: When the President called you that first afternoon that Justice Warren intended to resign, did he tell you then that he was naming Abe Fortas?

D: Oh, no. No, the President and I sat there for quite a long time.

F: Did you see him at the White House?

D: Yes. This was about three o'clock in the afternoon. "Well," he said, "we would have to find somebody to take the Chief Justice's place when he retires." In other words he will not retire until his successor is appointed and qualified because it was a one-sentence letter. "It is my intention to retire," that's as far as it got. "Now," he said, "have you got any suggestions?" "Well," I said, "why don't you trot out some of yours." "Well," he said, "what about Cyrus Vance?" who was then our emissary over in Paris. "Well," I said, "I think Cy would make a great Chief Justice; I've known him a long time." "Well, he probably would, but he's got a very substantial family, and they're moving on to college age, and I would gather that perhaps he would feel that he couldn't maintain a position such as he ought to maintain and get all those kids to college on the salary of a Chief Justice." Well, the salary then was \$53,500. Well, it could be, now it may have been that held already suggested to Cy Vance and that he got about that kind of an answer. Then I said, "What about Mr. Fowler, the Secretary of the Treasury?" I said, "As a matter of fact, we owe Fowler because he moved out, moved into a very prominent law firm and I, along with another Senator, went down to the White House and we argued with him about coming back into government, and he did."

F: This is when he came back as Secretary of Treasury?

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D: Yes. "Well," he said, "what would I do for a Secretary of the Treasury? We've got this gold imbalance and these problems abroad; Fowler knows the European bankers. If I got somebody who didn't know them, to start fresh and uninformed," he said, "that'd be quite a handicap, and I couldn't put my hands on somebody that quick." Well, there was very much in what he said. He said, "What about you?" I said, "What about William Campbell, the senior district judge in Chicago? He's been on the bench a long time, he's extremely popular, he's a good lawyer, he has fine judicial temperament." "Goodness," he said, "Bill Campbell, a friend of mine, long-time friend. Great idea. Wait a minute. Of course Bill's Catholic." I said, "That's right." "I don't think I'd like to disturb the religious balance on the Court, and I'm afraid perhaps I couldn't take him."

So we may have discussed a few more names and then came his intimation, "What do you think of Abe Fortas?" "Well," I said, "once upon a time he was on the Yale Law School faculty. He's a bright, brilliant lawyer, in fact, now he's been on the Court for three years," and at that time, this was August I think, and I went back to check the record, and he had been on the Court for three years. I said, "I know of nothing that has come to my attention to impeach his record or to denigrate him in any way," so we left it at that. Well, all these other things you know happened later. People thought that I had crossed myself up on this matter. I hadn't. When the President asked me, I said I certainly could support Abe Fortas on the basis of his record and what I see here now. I went back and got out the old hearings. There were fourteen members of the Judiciary Committee present.

F: This was when he named him the first time?

D: That's right, when we voted on the Fortas nomination and every one of them voted for him, and then when he went to the Senate that was a unanimous approval. So something highly derogatory would have had to have happened in order to modify that result over a three-year period. But then came all these little things, and that had an impact on the country and they in turn began to deluge the Congress with mail.

F: They took more interest, I guess, in a Supreme Court appointment than any other time in history?

D: Yes, because it became a highly emotional issue.

F: One last question and I'll let you go. Was the opposition in the Judiciary Committee when Thurgood Marshall was named, was this just a matter of window dressing or was it real?

D: Well, it wasn't so very substantial I must say. There are, of course, those little biases, as you know, and sometimes you don't quite rise above them, but mainly there was no substantial opposition. If anything, of course, they resented somewhat his continuing identity as a defense counsel for some of these organizations with which he was associated. And they thought it perhaps had been overdone, and that it had been

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emphasized in his life and therefore it could have impaired his objectivity because you would expect a person on the high court to be completely objective no matter what the subject matter of a case that might come before them.

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