

INTERVIEWEE: JUSTICE ABE FORTAS

INTERVIEWER: JOE B. FRANTZ

DATE: August 14, 1969

J: Mr. Justice, let's talk very briefly about your progress from a boyhood in Memphis until you wound up on the Supreme Court.

F: I went through public school in Memphis and then I went to Southwestern College in Memphis. When I got my degree at Southwestern College I went to the Yale Law School. After I got my degree at the Yale Law School, which was in 1933, I was elected to the faculty but that was the year that Franklin Roosevelt became President.

J: That was the year when you began to think again things were possible, wasn't it?

F: Yes, and Professor Wesley Sturges of Yale was called down to Washington during the summer of 1933 to do some work on sugar, as I recall. He asked me to come down. I came to Washington. Sturges was working in the Department of Agriculture. I worked with him then, and Henry Wallace, who was Secretary of Agriculture, got an extension of my leave from Yale. From then until January-February of 1938 I would teach at Yale part of the time and be in Washington part of the time.

J: You actually were with the Triple A part of that time too, weren't you?

F: That was part of the Department of Agriculture.

J: Yes.

F: Then I went from there, as I recall, to the Securities and Exchange Commission with Professor William O. Douglas, now on the Supreme Court. That was in 1935, as I remember.

J: Had you had courses with him?

F: Yes. I had also been his assistant in some of the courses at Yale. Then when he went on the Court--which I believe was in 1938--I became general counsel of the Public Works Administration. Then I became Director of the Division of Electric Power in the Interior Department. Public Works was in the Interior Department. Eventually, in 1942, I became Under Secretary of the Interior.

J: Yes.

F: I left the government service at the end of '45 and began law practice with a firm called

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Arnold and Fortas.

J: Yes. Porter came in later.

F: Yes. Porter came in later.

J: Then you were in private practice most of the time until '65.

F: That's correct.

J: Back in your Public Works Administration experience did you have any relationship at all with that Lower Colorado River Authority or the string of dams that was being built on the Colorado River in Texas?

F: I can't remember whether it was during my relatively brief time with Public Works or whether it was during my tenure as Under Secretary of the Interior, but in one of those capacities I did have an association with the LCRA.

J: To get me straight, you followed Alvin Wirtz in as Under Secretary?

F: Yes. There was an intervening Under Secretary. I should add, perhaps, that it was when I was Director of the Division of Power in the Department of the Interior that I became associated with LCRA in some way.

J: When did you first become conscious of Lyndon Johnson as a person?

F: Well, he and I have talked about that. I'm not sure of the dates. I'm inclined to think that it may have been as late as 1938.

J: It was, though, through your interest in public power from one end or the other, right?

F: No, it wasn't really. It was first, as I remember it, on a social basis. It was through Arthur Goldschmidt, who is a Texan and who worked with me in the Division of Power and Interior and is a very dear friend.

J: I have interviewed him and his wife.

F: Yes.

J: Did you know him through Maury Maverick?

F: Did I know Tex Goldschmidt.

J: No. Lyndon Johnson.

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F: No, it was through Goldschmidt.

J: It was through Goldschmidt. Did you spend much time together at that time, or was it just an occasional social scene?

F: I wouldn't say that we spent a great deal of time together, no.

J: You didn't really develop much of a friendship at this time--more of an acquaintance.

F: Yes, I think we did. But it was as a result of short periods of time.

J: Yes. Did you ever work on any of the Pedernales Electric Coop problems or any of the Lower Colorado River Authority problems?

F: I must have had some association with the LCRA problems. I don't remember.

J: But nothing that stands out in your memory.

F: No.

J: Then, when did you begin to draw closer to Mr. Johnson--Congressman Johnson by now? Or did you draw more closely during his Congressional days?

F: I don't know. I would see him every now and then, mostly on social occasions. In those days it was hard to draw a line between social manners and the affairs of government because the situation was tense and exciting.

J: Did you know Under Secretary Wirtz very well?

F: Very well, indeed.

J: Tell us a little bit about him. He's real to Lyndon Johnson and pretty shadowy to everybody else.

F: Well, he was a marvelous man. I think he was one of the outstanding men of my life. I first encountered him intensively, as I remember, when he was Under Secretary of Interior and I was Director of the Division of Power. We worked together on a number of projects then, and I acquired a great admiration for his character and his qualities as a man--and his ability.

J: Did he have as finely honed a political sense as he's reputed to have had?

F: I think so. It would be a little hard for me to judge that. I can say that he had a finely

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honed sense of judgment as to what was right and wrong and a tactical sense and a strategic sense about problems. I'm sure that he must have been an extraordinarily able adviser politically.

J: Did you see any evidence of his being a political mentor to Congressman Johnson?

F: I wouldn't put it that way on the basis of what I saw. On the basis of what I saw, they were extremely close friends. Congressman Johnson and he discussed a great many things and his advice was always somewhat the advice of an older man to a younger man. He was an extraordinary man--a great man, I think.

J: Did he seem to have an ability to put a halter on Congressman Johnson's alleged impatience? I don't think it's alleged; it's real.

F: I think I covered that when I said that the relationship was that of an older man to a younger man.

J: Did you have any lawyer-client relationship with Congressman Johnson prior to his Senatorial campaign in '48?

F: Not that I recall. I don't think so.

J: He was just someone you continued to meet and see periodically through about a decade?

F: Right.

J: All right. That brings us down to '48 then. Of course, as you know, that's a contested election, and that's the old "Landslide" Johnson election. How did you first get together with Congressman Johnson in this dispute?

F: I was in Dallas taking depositions in an anti-trust case. I was then in private practice. I remember it quite vividly because I had a terrible cold. I got a telephone call, as I remember, from Alvin Wirtz asking me to come over to a lawyers' meeting in a hotel at Fort Worth. I told him that I was busy taking depositions, so he arranged for me to come over at night after I'd spent a day taking depositions.

J: Probably hot, too!

F: So far as I know--and this may be based on something that President Johnson has told me--it was Alvin Wirtz who requested that I be brought in.

J: What was the situation at the time you came in?

F: As I remember it and again my memory may be faulty, my first encounter over there was

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in a very large open room in the hotel. I've forgotten the name of the hotel.

J: Probably the Texas.

F: Mary Rather was there. I remember Mary being there. And it seemed to me that there were acres of lawyers.

J: Was the Congressman there? Johnson?

F: I think he was ... if he was--

J: He wasn't officially a Senator yet, so--

F: If he was there, he was quiet.

J: I see.

F: The lawyers seemed to be having a great deal of controversy as to the next step to be taken. That was after Judge Davidson, I think--

J: Yes. Whitfield Davidson.

F: --had entered an injunction or restraining order or temporary injunction to prevent Mr. Johnson's name from appearing on the ballot. Time was very short--just a relatively few days--and the question was how a decision could be obtained from the Appellate Courts soon enough to permit Mr. Johnson's name to appear on the ballot. It seemed to be agreed that unless his name could appear on the ballot at that time then any subsequent relief would be of no help. That's the way it started off.

J: Were you involved at all in the hearing of the case down in Atlanta?

F: As I remember I--

J: John Crooker, Sr., I think, handled the bulk of that through that state.

F: As I remember I worked on the brief and John Crooker, Sr. argued it--or presented it. The strategy and the important critical move in that litigation was the strategic decision to present this in a summary way to the Court of Appeals and then to go to the senior Circuit Justice who was Associate Justice Hugo Black.

J: Did you have any idea where this strategy originated, or did it just sort of evolve?

F: I don't know. Maybe I was one of those who suggested it. I had had some considerable experience with Supreme Court procedure in my professional and academic careers. I felt

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very strongly that if we tried to go directly to the Supreme Court from the District Court we would be rebuffed, and that would mean the loss of some precious days. The important thing was to devise a strategy which would work on time. So we did it the other way and it did prove to be the correct procedure.

J: Well, is there any problem in this, in getting someone like Justice Black to hear it in chambers, or is that automatic once you petition?

F: No. A Circuit Justice will hear a matter of this sort in chambers. Ordinarily, that would not be the problem. The problem was to get it up there in time in a way that would not result in a dismissal of it because it had not been passed on by the lower court. It would have been a mistake to go directly to the Supreme Court, to Justice Black, and bypass the Court of Appeals. On the other hand, a way had to be devised in getting a very quick hearing from the Court of Appeals.

J: Did you have any difficulty with Coke Stevenson's group in this? Delay was in their favor.

F: They indicated that they didn't think we were doing the right thing.

J: But you didn't need their assent in this?

F: Oh, no. Presumably we would have never gotten it.

J: All right.

F: I can't imagine our getting it!

J: No. I don't see where they'd gain. Did you have much doubts of winning the case if you could get it to the Senior Circuit Justice in time?

F: With all respect to Coke Stevenson and his lawyers, there really was no question about the merits of the case. The injunction was improvidently entered; that is, the federal judge enjoining the state election under these circumstances was just plain wrong.

J: This hits that right of a state to determine who votes and who the candidates are.

F: Well, in certain circumstances. This was an alleged fraud which--

J: Right--

F: --in these circumstances was a state matter, so that there wasn't a great deal of doubt in my mind, as I recall, about the merits of the problem. It was a very difficult procedural problem. It was particularly difficult since Mr. Johnson had brought in all of these eminent lawyers who had different ideas.

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J: Yes.

F: There was a risk, particularly, I thought there was a risk. I was an outsider and a youngster.

J: Once you determined to come to Justice Black, were you, more or less senior officer-in-charge? In other words, were you handling it then?

F: Well, I think Alvin Wirtz and I were in charge. More accurately, he was in charge and with his usual kindness and graciousness, he deferred to me and let me take the lead, making sure to keep me on the straight and narrow path.

J: On something like this do you personally prepare the brief? Do you farm it out to one of your young associates who is particularly bright? Or what's the procedure?

F: You mean generally?

J: Yes. In your preparation. How much of this do you handle personally?

F: I don't believe that there's ever a case that I've argued in which I have not personally done the final draft of the brief. There's a misunderstanding in the book about the Gideon Case on that. I wrote the final draft of that brief in a room in the Biltmore Hotel in two days and two nights on the basis of drafts that young men in the office under my guidance and with my collaboration had turned out. But the final draft was written by me.

J: All right now. We've passed Supreme Court Justice Black. We've got Senator Johnson now.

One of the big issues in the early period of Senator Johnson's Senatorial days, was, of course, the McCarthy issue. You'd been active since before Johnson became Senator on this matter of representing people for loyalty accusations and the general principle of internal security and so forth. And especially the State Department which was a particular target of McCarthy's. Did you have any contacts at all with Senator Johnson on this? Did he show any great concern in the development of so-called McCarthyism?

F: I'm sure that he did, and as matters eventually turned out it was perfectly clear that he did. I do not recall ever talking to him or trying to suggest any course of action to him. I was a lawyer. I stayed away as much as they'd let me from the Hill on this matter. I certainly would not have considered it appropriate to ask Senator Johnson to do anything. As it eventually turned out, in my opinion, he was of crucial importance in the eventual resolution of the McCarthy campaign which I regarded as very inimical to freedom in this country. But I don't recall ever having asked him to do anything.

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- J: And he never sought your advice on what he ought to do?
- F: No. Now, it may be, Dr. Frantz, that on various occasions we would gather and there was conversation about it. I never had the slightest doubt as to where he would stand and that, in his own way and with his own extraordinary skill, he would be in there trying to do what was the right thing. By that I mean the so-called liberal--
- J: Yes. When it came to the strategy of censure, did you have any contact with him on that?
- F: No.
- J: Moving ahead. Of course, he put through the first Civil Rights Bill in three-quarters of a century, and you had always been active in the civil rights field. Did you have any discussions that stand out in that, more than just a merest casual sort?
- F: Not that I remember.
- J: So that you didn't play any role in either bill--drafting or advising how, or whatever?
- F: Not as I recall.
- J: Did he utilize you in that period?
- F: No.
- J: Where in your relationship did you become his personal lawyer?
- F: I wouldn't say that I ever became his personal lawyer.
- J: Well, to a certain extent he turned part of the management of his affairs and his future over to you, from what I can gather. You personally drew the will and so on.
- F: Oh. I see what you mean. It's hard for me to place that as a matter in time. After Paul Porter joined the firm, I believe that the Johnsons turned to us every now and then for additional advice with respect to their radio and television properties. I say additional advice because they were represented by another firm. It may very well be that from time-to-time they turned to us for other sorts of advice about family financial interests. It's very difficult for me to place that up to the time when he became President, really. Now the files of the law firm would reflect what, if anything, there was.
- J: For my own information, would either Paul Porter or Thurman Arnold have enough to contribute to spend part of an afternoon with them?
- F: I would certainly urge that you talk with both of them.

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- J: I'd planned to, but you never know until you sort of check them out.
- F: Paul, particularly, would remember a great many things and Thurman would probably not have a great deal to contribute. But the little that he would remember would be worthwhile.
- J: Good. In working on cases like the Gideon case, did you ever talk with Senator Johnson about this sort of thing just as a matter of principle? Obviously, you wouldn't talk to him as a lawyer to an outsider. But I mean on what's involved.
- F: No.
- J: Coming on forward when you get down to 1960, is he talking with you at all about his plans or lack of plans for the Los Angeles convention?
- F: Not so far as I remember.
- J: Did you have inkling that he would accept the Vice Presidential nomination under Jack Kennedy?
- F: No. I was startled when he did.
- J: Where were you? How'd you hear it?
- F: I think just--
- J: Did you go to Los Angeles?
- F: No, I didn't. I think just public--
- J: Just like anybody else who's interested, huh?
- F: No. I signed one of the first published ads for Johnson-for-President.
- J: Yes.
- F: I've forgotten when that was. He didn't ask me to do it, somebody else did. I've forgotten who it was but, of course--
- J: You weren't active in any preconvention strategy of any sort?
- F: No. I wasn't. Not at all, except I might possibly have talked to friends about it. I may very possibly have been of some slight assistance, but I don't remember that I did it at his

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personal request.

J: Did you take any part at all in the election campaign?

F: No.

J: Now, he's Vice President.

F: Well, let me qualify that.

J: Yes.

F: I did, on various occasions, talk to friends and acquaintances and try to lay before them the reasons why I thought he would be a great President and try to enlist their support.

J: Yes.

F: Beyond that sort of citizen activity--

J: Not more than any good concerned layman..

F: That's right.

J: You were active in the early '60's in the field of racial discrimination-- Did you ever, as far as you know, consult with Mr. Johnson on that?

F: He consulted me about that, and I worked very intensively on that matter. Not because of any other interest but he interested me in working with him.

J: Where'd you think he'd gotten in?

F: I don't know. You are talking about after the election?

J: Yes.

F: I thought that he had been asked to do this by President Kennedy. This was my impression.

J: Yes.

F: And, I believe that I had substantial part in drafting the first Fair Employment Practices Executive Order. I remember that the Vice President, Mr. Johnson, asked me to attend the press briefing which was in the Fish Room at the White House. He briefed the press on that order, as I remember. I sat with him, and after the briefing he very kindly urged

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me to come in with him and talk with President Kennedy. We both went in and we reported to President Kennedy about the press briefing. I remember this very vividly. President Kennedy was eating cheese and crackers, and I think we had a Scotch. I don't remember--

J: Is this in the Oval room or upstairs or?

F: This was in the Oval Room. I think that President Kennedy had coffee; I'm not sure. He may have had a Scotch, too. The Vice President was very generous in talking about the contribution that I had made in the drafting of the order. I remember that President Kennedy said that he did not understand why the Negroes were still exerting a lot of pressure and expressing a lot of dissatisfaction because he had appointed so many of them to positions in the federal government.

I remember that I was startled by that statement and that I was bold enough to say to him that I didn't think they would be satisfied by that or by much of anything in terms of specific and immediate moves; that, in my judgment, this was a social revolution that we were confronting in terms of what the Negroes wanted, what their aspirations were, and what history demanded that the country had to do for them at this particular time.

J: Did President Kennedy seem to grasp what you were talking about?

F: Well, I thought he did. I felt a little abashed that I had volunteered that statement. I did it out of surprise.

J: You were rather surprised to hear your own voice saying those words?

F: Yes.

J: Did President Kennedy, so far as you could tell, seem pleased with how Mr. Johnson brought off the press conference and the order?

F: I thought he was delighted. I thought he was very pleased indeed. He was very warm toward Vice President Johnson. It seemed to me there was a very good rapport between the two.

J: Did you get the feeling in those days that there was a certain rivalry between Vice President Johnson and Attorney General Bobby Kennedy to see who could sort of pick up the mantle of the civil rights movement?

F: No. On the contrary I got the impression that Mr. Johnson was being absolutely meticulous about doing what he was asked to do by the President, and no more.

J: Did you ever get the feeling that he was frustrated, that he felt maybe he'd made a mistake

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in a sense in stepping down from the Senator Majority Leadership into the Vice Presidency?

F: No.

J: He never talked about it being a useless job?

F: Not to me. Not so far as I recall.

J: Did you get any feeling that he thought that he was being "knifed" from within the Administration and might be dropped in '64?

F: No, I did not.

J: You've always, of course, been quite active culturally, and been on the [boards of] the Washington Gallery of Modern Art and the Kennedy Center for the Performing Arts. Did you ever advise Mr. Johnson on cultural events that he wanted to stage, participate in, or so forth? Did you ever act as a cultural adviser at all?

F: I'd have to qualify that. I talked with him quite often about the cultural development of the country and tried to enlist his support--which he gave, and Mrs. Johnson gave unstintingly and with, I think, remarkably fine results. I had been instrumental in arranging for the first great cultural event in the White House which, I think, sort of gave the whole cultural development its impetus. That was the famous Pablo Casals concert. That had come about, more or less by chance, when I was in Puerto Rico at a Casals festival. I was a director of the Casals Festival. I had put that thing together. It was the first time that Casals had played in the United States since the recognition of Franco.

J: Yes.

F: There was a problem of overcoming his reluctance to play.

J: Did you talk to him personally on this?

F: Oh yes indeed!

J: How did you break down his resistance?

F: It's a long story.

J: I'd like to have it.

F: I was there at the Casals Festival. Shortly before the Festival President Kennedy had hurt his back planting a tree. I went backstage after one of the concerts in which Casals had

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conducted the orchestra. Casals kissed me as he always does and he said to me, "How is the President?"

I said, "I understand that he's fine--that he's recovered from his back injury."

Casals called his beautiful wife, Martita over to hear the conversation. Casals then said to his wife, "Isn't it strange that a young man like President Kennedy would hurt his back planting a tree?" Casals said, "I could plant a tree without hurting my back." Casals was then in his eighties.

I said, "But, Maestro, the President is not a Catalan." Casals was very amused by that and repeated it to his wife. I got the impression as we talked along that Casals had a great admiration for President Kennedy.

When I got back to Washington and reflected on this it occurred to me perhaps Casals would come up and play at the White House. I called Pierre Salinger and asked him if they would be interested. Salinger called me back some time later and said they would be enormously interested. I then had a long series of talks with Casals by phone and letters. Casals finally decided that what the Administration was doing was so great that he would like to honor the President, that he would play in the President's house, and that that would not be breaking his word to the effect that he would not play in any country that recognized Franco. So the thing went on from there and was eventually arranged. I went over to the rehearsal. They played the Mendelssohn Piano Trio. I was there at the concert.

- J: I had an opportunity to see him when I was in Puerto Rico about three years ago. At the last minute my own schedule went awry and I missed the appointment which has kind of bothered me ever since except I sometimes get the feeling he's going to pass me somewhere and I'll get back to him.
- F: One of the things that I agreed to do was to arrange for Casals to have a private talk with President Kennedy. Happily the White House worked that out. I went over to the White House with Casals and Mrs. Casals and I waited outside upstairs as Casals went in and had his private talk with President Kennedy. Later when Casals played at the White House for President Johnson, similarly he had a private talk with President Johnson. He talked with both of them, as he told me, about peace.
- J: Is Casals' English serviceable?
- F: It's glorious.
- J: It is.
- F: It's slightly accented but I've heard him make speeches and it's beautiful.

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- J: Did you have any hand at all in bringing him back for President Johnson?
- F: Yes. I think I was instrumental in arranging that.
- J: Did it take any particular persuasion or having once "wet his feet," was he willing to come?
- F: No. The precedent had been established, and that was not a matter of much difficulty.
- J: This made for two of the finer evenings at the White House.
- F: Yes.
- J: Really in it's history! Did you have any other cultural involvement with the White House during the '60's--as far as arranging, suggesting, advising?
- F: After Mr. Johnson became President I was quite active with respect to the establishment of the Arts Council, first by Executive order, and then in connection with the legislation and the affairs of the Kennedy Center. My wife, as you know, has been working very intensively on the beautification--
- J: Now you've been on the board of the Kennedy Center. Did President Johnson involve himself actively in that, or did he pretty well just help to keep the thing viable and leave it to others? Did he come to any meetings?
- F: Well, he's not a member. He wouldn't come to any meetings, but he was always interested in it and his participation and sponsorship were decisive with respect to setting up the Arts Council.
- J: Did you advise with him as to the membership on the Arts Council? It's a good membership.
- F: Well, as it was originally set up I believe that he asked for my views on various of the members.
- J: Would you contest the statement--you know there's sort of a popular feeling about the Johnson years in the White House that it was all string band and barbecue and cornbread sort of thing--do you think a careful examination of the facts would bear that out?
- F: That's, if you forgive me for saying so, total idiocy. It's malicious, idiotic. It will be a long time before there will be another Presidency in which the Arts have received the stimulus, the recognition that they did under President Johnson. The events at the White House were of absolutely superb quality. I hope I had some participation in helping to set the

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tone and level of those events. The finest artists in the country were over there. There has never been anything like it--not anything even approaching it!

J: This is subjective. Did you get the feeling that President Johnson enjoyed those evenings or that he endured them?

F: That's hard. I couldn't comment on that--that's just impossible. You know a President always has a lot of things on his mind. President Kennedy--I sat behind him once or twice, and he always had a lot of things on his mind and so did President Johnson. I must say that I remember very vividly President Johnson going over to the concert of the National Symphony and, I don't know, he seemed to enjoy it. Of course, this is a man of vast--.

J: First President in, I don't know when, that has been there.

F: Yes. One evening, I remember very well, he went there--and perhaps it was the evening when Van Cliburn was the featured artist.

J: He was there, at least, once with the Boston Symphony under Leinsdorf.

F: Yes. Under Leinsdorf. Leinsdorf is a very good friend, as you know, and there--

J: Yes. I have an interview with him.

F: --a real friendship between those two men. But one of the things that people don't understand about Mr. Johnson is--at least I think he has an extraordinary aesthetic sensibility. I may be wrong about that. But I think he has. It's untrained insofar as music and art are concerned. But he has a natural sensibility and sensitivity about such matters.

J: He's not a dilettante and what that word implies, but more of a--.

F: Yes. He just has kind of a natural appreciation, I think. I doubt if you can find people in the country who would agree with that, but I'm pretty sensitive to the people on that score and I believe he has.

J: Did you have anything to do with bringing him together with Roger Stevens?

F: Yes, I did.

J: Want to tell me about that?

F: I believe--I may be wrong--that I suggested Roger Stevens to him as the--

J: You knew Stevens personally?

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- F: I knew him very well and worked with him and had great admiration for him, and I've said elsewhere that Roger Stevens was really the indispensable man.
- J: Did it take you any great persuasion to put Stevens in the job, or did he see the challenge and the opportunity?
- F: Oh, no. Stevens is a wealthy man and he then was devoting--and is still devoting--his entire life to the promotion of the Arts in the country. There were no problems, as far as Stevens was concerned.
- J: Did the two men, President Johnson and Mr. Stevens, get on well at the outset, or did they sort of have to feel each other out before they--I think they came to a point of having great confidence in each other-- making a good team.
- F: I think at the outset there was no friction at all. I don't believe there was any real friction at any time. There were vexatious problems about the Kennedy Center from time to time--
- J: Well, that's something else.
- F: --of which Stevens was head, and that had to do with a great many factors which Stevens really was not responsible, but he was sort of in-the-middle. But there was nothing really serious. As you know, the President quite often grouched about situations which created vexatious problems for him.
- J: Yes.
- F: People who didn't know him might take him kind of seriously.
- J: Well, he had to let off a certain amount of steam.

Moving into less pleasant things. Were you involved at all when the Bobby Baker case began to break? Did the President call on you for any advice? Did you get involved in trying to represent Bobby or in trying to find out what the facts were?

- F: I believe that I was involved in the early stages of that in the sense that Bobby Baker did come and talk to me, as I remember. I think we did represent him for awhile.

You see, that whole Bobby Baker thing started out in what appeared to be routine litigation with some outfit that sold or rented these vending machines. As I remember, Bobby came to me with respect to that litigation. And as I remember, we (I and some of my associates in the law firm) worked with him for a time. Then I subsequently, with Bobby's consent, withdrew from the case. As I remember I withdrew from the case because it looked as if it was going to have some very wide ramifications that I didn't

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believe I could appropriately be involved in.

J: Now, the Bobby Baker case is a half-dozen years old and, in a sense, has still not been completed or proved, so we won't pass any judgments here. But the political implications and political potentialities at the time were enormous.

F: Yes.

J: How does Vice President Johnson then react to something like this? Does he tend to panic? Is he pretty, you might say, sedate about the whole thing and quietly weighs the evidence? What was his reaction, or did you have an opportunity to observe it?

F: That's very difficult to describe. I would certainly say number one, he does not panic. I don't know any reason for him to do it then. Number two, insofar as he is involved in it, he does go into such matters and all matters with great intensity and with a great deal of detail. Certainly it does not impair his ability to function in a very methodical, logical and effective way.

J: When John Kennedy was shot in Dallas, where were you?

F: I was in Washington.

J: How'd you get the news?

F: Just as a member of the public. I forget precisely.

J: You were likely at lunch. I think half the nation was. Did now-President Johnson get in touch with you very soon after that, as you recall? Were you involved in those immediately confusing days that followed and the transfer of authority from the Kennedy Administration to the new Johnson Administration?

F: I believe that I was asked to--I'm not sure whether my first meeting with President Johnson after Kennedy's assassination was in the Executive Office Building--or was it at the Elms? It was one or the other. I have a feeling that it was at the Executive Office Building, and then it would have been the morning after he came back.

J: Did he just call you or did you--?

F: Yes. I never initiated anything with him in all of my years.

J: You just stood by and waited. I mean, you didn't "wait" but were available?

F: Yes. Either he called me or somebody else did.

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- J: Do you remember what you talked about on that morning after?
- F: I have a visual memory that I would like to state. Now whether it was that morning after or subsequently, but whenever it was that I first saw him after he became President--when I first saw him in the Vice President's suite in the EOB, I had a feeling of comfort. I remember that so vividly. I was terribly upset, as everybody was. But there was a studied calm about him, when I first saw him in the EOB. Work was going on; the business of the country was being done. He had his mind on the country's needs, and I got a feeling of great comfort.
- J: There wasn't any sort of wholesale confusion then?
- F: No, there wasn't. There was no disturbance, no commotion, no what-do-I-do-now?
- J: As you recall, were you pretty much alone with him, or did he have a whole group in at that time?
- F: At the EOB meeting of which I'm talking, he and I were alone. I remember about that time--I can't recall the chronology of it--going to the Elms. And there were a lot of people around. Probably it was later, I don't know.
- J: That would have been a different setting, a little less controllable.
- F: Well, there were a great many people there at that time.
- J: Did he ever express to you any reasons for keeping on so many of the Kennedy people? Do you have your own?
- F: He talked with me from time-to-time about it. I wouldn't want to characterize what he said then. I remember there were references to it through the years.
- J: Did he have a feeling that they were looking back to the Kennedy days or that they could transfer their loyalty?
- F: I think that he was strongly motivated at the outset by a desire to represent continuity to the country and to the world. You remember that in his first speech to the Congress that theme was stressed. I think that that was one of the articulated reasons why he kept them on. I think there was a complex of reasons. Some of them, I think, were very deeply imbedded in the psychological problems.
- J: Did you ever consider any Cabinet portfolio or any other administrative position under President Johnson?
- F: No. He was kind enough to talk to me at some point of time about the Attorney

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Generalship, as I remember. I was not interested in that or any other position.

J: There was no pressure for you to take it.

F: No.

J: Did you ever consider going on the White House Staff?

F: No.

J: According to rumor, you were offered a Supreme Court position once and turned it down.

F: Yes. And he has in his files a handwritten letter which I wrote him to tell him the reasons why I was turning it down and thanking him. I did not keep a copy--I did not write it for the record. I wrote him because I didn't want to go on the Court and I wanted to tell him why. I didn't want to make a record for history or anything else. He has that letter, I'm sure.

J: There is, of course, the cliché that "you don't turn down the President" which everybody knows is not true, but did this give you any pause?

F: At that time?

J: Yes.

F: Well, of course, it did but I so strongly felt that I did not want to do it.

J: What made you change your mind later?

F: He did. He really--

J: This time he wanted you!

F: The story has been published. I got a call from him asking me to come over. He was about to have a press conference--a televised press conference. I went over and he said, he was signing an order sending men to Viet Nam and he was going to announce at a televised conference that he'd appointed me to the Supreme Court. By that time we were half way down the hall to the press conference. To the best of my knowledge, and belief I never said yes.

J: He just announced it. Took it for granted you said yes. I have other evidences of that from people. Joe Califano--this is no secret--was announced as his aide, his White House assistant, before Joe knew what the job was!

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I know that, going back to the Truman era, that you had been a member of the Committee for National Health, working towards some kind of a national medical program which, of course, culminated during the Johnson Administration. Did he seek your advice on this? Did you have any hand at all in drafting the first Medicare?

F: No.

J: When the Dominican crisis broke out, were you consulted on that?

F: Yes.

J: What was your role in that? Where did you come in and where'd you get out?

F: I was to go there after troops had been sent in, and I was quite active in that. I've had years and years of association in Puerto Rico.

J: How'd you get in Puerto Rico, incidentally?

F: Well, when I was Under Secretary of Interior first, and then as a lawyer--and as a friend and adviser of Munoz-Marin. And I was a participant in the invention of the Commonwealth form of government and a participant in their economic development program.

J: Boot-strap.

F: There came a point of time in the Dominican situation when I was asked to go to Puerto Rico and see what I could do with Juan Bosch. I went down there privately and secretly and had a number of meetings with--

J: Had you known Bosch previously?

F: No. I had not. But he was a great friend of the Chancellor of the University of Puerto Rico, who was one of my very close friends.

J: Who was Chancellor then?

F: Jaime Benitez.

J: Yes.

F: So I went down to San Juan on that. I worked very intensively on the Dominican crisis--all the way through that.

J: Did Bosch seem a reasonable person?

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- F: That is the one word I would not apply to him. He's a fine man in the sense that he is very dedicated to his people. But he is a Latin American "hero type." He was not--
- J: A bit of a poseur?
- F: No, I wouldn't say so. But he's a very poetic, very dramatic man. When I referred to a Latin American "hero type," I'm using that in a very special sense.
- J: I know. I've spent a lot of time in Latin America.
- F: He was not a practical or pragmatic man, but he was a man of intense idealism--but very, very emotional, very emotional.
- J: Did he ever, to you, express any idea of going on back in? You know, there was always that criticism of him for staying in Puerto Rico where nothing was flying. And being the idealist over there instead of being idealistic in a more hectic area.
- F: Well, I guess it's all right to say this. I remember sitting on the chair in the room at Jajomé, which is the Governor of Puerto Rico's summer home way up in the hills, very isolated. We had arranged that as the place for the meeting because it was isolated. And Bosch was sitting on the couch and Benitez was sitting on a chair--Benitez, somewhat to my concern, was trying to persuade Bosch that it was his duty to go back into the Dominican Republic. I remember that as Benitez kept up the pressure (and Benitez can apply pressure).
- J: Yes, I know Benitez.
- F: Bosch had a heart flutter, which he every now and then had. I came away from that meeting with the conviction, which I believe I reported, that Bosch had no intention whatever of going back to the Dominican Republic so long as hostilities were going on.
- J: Were you sent there with stated goals, or were you just to see what you could learn from him and out of that try to figure out what was best?
- F: The situation was pretty formless at the time that I was sent there. The whole objective, as I remember, was to try to cool down the situation and to get an appraisal of what was likely to be done. One of the problems was to try to get Bosch to cool off his own faction in the Dominican Republic. I think, not through my efforts but through really masterful generalship on the part of President Johnson, the thing really worked out very well--much better than I had thought it could possibly work out.
- J: Did you get the feeling from Bosch of an implacable anti-Americanism or do you think this developed--I'm going pretty largely on the evidence of his book--after settlement was

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made and he was nowhere in it?

F: I certainly did not get the feeling of anti-Americanism from him. I certainly did not.

J: Did you have a feeling that more could or should have been done to enlist him, or do you think that the sort of maximum consistent effort was made?

F: No, I don't think any more could have been done with Dr. Bosch. I believe actually what happened was that the situation very quickly got out of his hands. I think really by the time I was there his control over the small group of fighting partisans in the Dominican Republic was very slight and it became less as time went on and he stayed in Puerto Rico. He had some communication there with his own people, but it wasn't very much. I don't believe that anything more useful could have been done with him. I think that what happened was that the movement just got away from him.

J: He wasn't really running an effective, aggressive government in exile in Puerto Rico? He was just in Puerto Rico.

F: No. There was no government in exile in Puerto Rico. No. I think that the control passed into the hands of the people who were there and heading up the fighting.

J: From your vantage point in this did you think that President Johnson over-reacted? I think you want to keep one thing in mind in answering that, and that is your own simpatico relationship with Puerto Rico. You've got some idea of the Latin mind and its quick sensitivity to interference. Now, then, with that in mind, do you think the President did the correct thing in this, or do you think he should have been more chary of the charge of interfering?

F: I don't know. I really don't know. It worked out well. It worked out all right, and I guess that's the test, so I guess he was right. But I think that if I had been asked at the time, "Should we or should we not send troops in," that my inclination would have been no. And I might very well have been wrong.

J: You would have said no simply because you were aware of this sort of "watchfulness" on the part of the Latin American for any U.S. involvement.

F: That would have been primary. The secondary part of it would have been that on the basis of my limited knowledge I would have been very skeptical about the possibility of important Communist participation. And as matters turned out I think the Communist participation was quite slight. I mean to say the professional communist. There were professional Communists in this.

J: You had that list of Communists that--you know of "hard core" Communists-- that were down there, and I think that bothered a lot of people. But this is sort of like Joe

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McCarthy is "a-holding my hand."

F: Well, no. I believe that there were some "hard core" Communists there. There always are Communists whenever there is internal trouble. What you have to do is to make an estimate of what is the degree of danger that the Communists will gain control of the revolutionary movement, and then weigh that against the total consequences of the move that you're about to make. I have no doubt--no, I'm sure that there were some hard-core Communists there. But I also believe that there was never a point of time at which there was a danger that they would take control of the movement from Bosch and then later from Bosch's people who were not Communists--who were military. The top people were military people and not Communists. But however that may be, I think that President Johnson did prove to be helpful. And the net result was beneficial.

J: Did you go into the Dominican Republic itself?

F: No.

J: You didn't get an opportunity to see then Ellsworth Bunker or McGeorge Bundy--any of those?

F: I saw McGeorge Bundy in Puerto Rico when he came over which was after I had been there and after I had visited with Bosch. Bundy came over and, as I remember, I arranged what may have been the first meeting between Bundy and Bosch before Bundy went over to the Dominican Republic, as he did. My whole problem was not to surface in this. I had no official position whatever and went down there under cover. I stayed under cover and I don't think that there has ever been anything published except maybe a reference to the effect that I was there.

J: You'd been seen in Puerto Rico.

F: No, I wasn't seen in Puerto Rico really by anybody who talked about it. I think Benitez was the one who inadvertently, as he subsequently told me, brought my name into it.

J: Did Benitez's involvement go deeply enough to warrant my seeing him?

F: Yes. If you want to pursue this Bosch matter and the Dominican situation.

J: One other question I wondered is whether Luis Marin-Munoz was sufficiently involved with President Johnson at any level to fool with?

F: I would not think so. If you go down there you could have a perfectly delightful marvelous interview with one of the great men of our times.

J: Yes, Well, if I went I'd do that and also with the Mayoress at San Juan.

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Let's come home. This is after you're on the Supreme Court, but you were dissenter on the Court's decision that the Georgia legislature had the right to name the Governor there in 1966, which, of course, has tremendous political implications. Did you ever have any opportunity at all to discuss this with the President?

F: Oh, no. I wouldn't think of it. Nor would he think of it, I'm sure.

J: Did he ever comment on Supreme Court decisions, or did he just take them?

F: oh, no. Not to me. No, sir!

J: Well, before we get back to the Court, I want to ask one other question-- earlier--and that is were you involved at all in the attempts to hold the wage price line in '64 and '65 or in the threatened steel strike of '65, which, of course, threatened the wage-price trust.

F: I may have been in some conferences having to do with the "hold the line". [I] may even have been in some conferences on the steel situation but, if so, it was just on an internal basis, not in terms of talking with any of the steel companies or anything like that.

J: Were you ever asked by the President for any advice on what to do about the draft or hadn't it become a sufficient problem before you went on the Court?

F: I'm sure I never was.

J: The New York Times said about you when you went on the Court, and it may have been said other places, that this was looked upon as a great triumph for Great Society "liberalism." Is the so-called Warren court open to the charge that it does make political decisions?

F: No. In those terms definitely not. Political decisions? Absolutely not.

J: I'm not talking about the fact that so many decisions have political overtones. That you can't avoid. They have social overtones. They have. You know a great deal is being made right now with Mr. Nixon's appointments--of the fact that the Court is now coming back to lawyers as technicians rather than as creators and philosophers.

F: That's a long story. I made speeches about it. There's an ignorant way of looking at Constitutional law. The ignorant way of looking at Constitutional law is to totally disregard what the founding fathers did when they wrote the Constitution and the Bill of Rights. When they wrote the Constitution and the Bill of Rights they wrote the documents to survive the ages. What they did was to set out what [Judge] Learned Hand has called "majestic generalities." It was their plan, their hope, their intention, that those "majestic generalities" would serve a nation during the decades and the centuries to come.

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That meant that these "majestic generalities" would be philosophical, moral, social, political guides to decisions like the Ten Commandments and the Bible. There have been lots of dispute about keeping the Sabbath. Some people keep it on Saturday; some people keep in on Sunday. Some people keep it one way; some people keep it another way. But there's still an admonition there that that is a special day.

The same thing is true with the Constitution. The words written in the Constitution assume different meaning, different impact, and they are applied differently from time-to-time depending on the total national situation and, sure, depending on who applies them. But that's the way it is. People who talk about the need for technical lawyers to construe the due-process clause, for example, are really saying that we think that there ought to be less content given to the due-process clause. But, still they're construing it with just as much freedom, just as much looseness, as somebody who says there ought to be more content to the due-process clause. They're narrowing it down; the other people may broaden it out. But that's all there is to this kind of meaningless fracas.

- J: When the President submitted your name to be Chief Justice did he have much prior consultation with you on this?
- F: Not much, but he did tell me he was sending my name up and he thought that it would go through all right.
- J: Do you think that the fact that, as of March 31, he had decided not to run had sort of let some of the Senators feel they could now oppose him with impunity?
- F: No doubt of it. I believe he thinks so, too, in retrospect.
- J: You're not a single instance; you're part of a pattern--the most spectacular part, perhaps, but still a pattern developed. Now, do you think, on the other hand, that it was a political mistake for the President to announce that far in advance that he was not going to run again?
- F: No. I think that that was the right date if he was going to do it--that the timing of that was right. I had previously spoken to him about that when he was discussing whether he should nor should not--
- J: Did you have a strong feeling earlier that he might not run again?
- F: It varied from time-to-time. There was a time, the end of the preceding year, when I rather thought he would not run. And then as some time went on and I didn't hear any more about that, I had sort of put it out of my mind.
- J: A certain amount of it is the President's way of talking all sides of an issue when he's talking.

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F: Yes. The end of the year, the preceding year, if I had had to guess I would have guessed he probably was not going to run. But then as time went on I dismissed that, and the March 31 announcement came to me as a surprise.

J: Were you listening?

F: Yes, and one of his aides called at the beginning of the speech--telephoned me--and told me that the President was going to do this.

J: So you didn't have that surprise.

F: So I didn't have heart failure!

J: Do you think he did that on the President's initiative or on his own?

F: Oh no. The President instructed him to do it. It was an act of great kindness and thoughtfulness.

J: Without being specific, did you find a lot of this sort of wide-ranging thoughtfulness on the President's part over the years?

F: I think so. Yes. Very much so, as far as I'm concerned.

J: I'm amazed sometimes, I mean--this is personal--I'm amazed at how he can pull names out of people who would be concerned with something, you know. You'd think there would be enough else going on in his mind that that wouldn't occur.

F: No. I believe he is very careful and very thoughtful about that--very resourceful--about doing the things that ought to be done with respect to people.

J: When the appointment to Chief Justice ran into trouble, did he consult with you before he withdrew the name?

F: I told him that I wanted to withdraw and he never, at any time, suggested to me that it should be withdrawn.

J: When you told him that did he accept it without comment?

F: Yes, he did. As I remember--just some general, vague statement. But it was my initiative.

J: I could check this record out--you may know. The first time around you had three dissenting votes from the entire Senate for your nomination; in other words, you got ninety-seven out of one hundred, which is pretty good shooting. Were these repeaters in

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the Chief Justice nomination, or do you know?

F: There wasn't a vote, you know.

J: No. I know it. But I mean were they the leaders of the opposition?

F: No. They weren't the leaders, as I remember. I've forgotten who they were. But Strom Thurmond had come on the scene.

J: And, of course, again he was implacable--

F: I just don't remember if they were the leaders or not.

J: You had the opportunity to see and work fairly closely with a number of Administration, from Franklin Roosevelt forward. I think, like everybody else, that comparisons are invidious, but how do you sort of rate the Johnson Administration? In other words, when we get away from all the smoke and fire and the fact that in these days with so much exposure we tend not to like our Presidents after awhile or we grow tired of them--when all that has cleared and has receded and you can look at this thing objectively, how do you think the Johnson Administration--what's going to be its strengths and weaknesses?

F: I think it was a great historic Administration. What it did was add a new dimension to American life. It brought the country to a new plateau. It's one of the truly daring Administrations in history. It brought thirty million people into American life--blacks and the poor people who'd been outsiders, and they were brought in to be participants in the American scene.

J: Do you agree that one reason that you did run into this--and later tremendous--discontent was the fact that they had been brought into life?

F: Sure. That's always a fact. So long as people are suppressed, totally, you don't have much trouble with them. You get into trouble with them just as soon as you start their emancipation and liberation. In other words, you can keep people under suppression and live happily ever after. Just as soon as you give them living room then the trouble begins. History teaches that. You can't lift the lid off a pot which is boiling without its boiling over. You can't keep it on just a little bit if you expect the mess inside to stay there. The mess inside boils over.

J: You came from a background not identical with the President but with some similarities and, I might add that as a kid, I used to spend my summers in Memphis and know the old Union Station and that area around in there particularly. Where did you make your metamorphosis? I feel, probably, that the ideas that you came to have, aside from normal growth, are not the ideas you had as a kid.

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- F: Oh no. I remember, as a matter of fact, with a sense of shock I realized that the first time I ever shook hands with a Negro was when I was in college. Negroes lived in the alley behind us. I played with Negro kids until I went to school. Then the curtain fell. As I said, the first time I ever shook hands with one was when I was in college and that came about because I was President of a philosophical club and I invited--
- J: Is this at Southwestern or after you had gone to Yale?
- F: Southwestern. I invited the leading Negro minister to come to the campus. I believe it was the first Negro who had ever come there. And he came and he made a nice Uncle Tom speech and I shook hands with him. What I don't know is where I got the idea that Negroes were people and entitled to rights and to decent regard from others. It must have been sometime when I was in college, and it must have been as a result of thinking or reading or something--or in my genes and chromosomes. Certainly my family doesn't share my views.
- J: You have a considerable record in the civil rights field. Did you ever set out to be a civil rights crusader or did you just take those cases because they concerned and interested you the same way, I presume, you took the Gideon case? I don't presume up to that time you paid much attention to what Gideon was imperfectly fighting for.
- F: No. I think it's a little more than that because I remember being on a couple of committees around here. One committee I remember that I was on was had to do with desegregating the National Theatre way back. But I didn't do much of it--I did very little of it.
- J: Somehow it seems almost quaint now, doesn't it?
- F: Yes, it does. In those days Negroes were allowed in the audience at Constitution Hall but not on the stage. National Theatre--
- J: I can remember the flap over Marion Anderson.
- F: At National Theatre they were allowed on the stage but not in the audience!
- J: Thank you, Mr. Justice.

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