

Interviewee: Earl Warren

Interviewer: Joe B. Frantz

Date: September 21, 1971

F: This is an interview with former Chief Justice of the Supreme Court, Earl Warren, in his office in the Supreme Court Building in Washington; the interviewer is Joe B. Frantz. It's September 21, 1971.

Mr. Chief Justice, let's talk very briefly about your background. You were governor of California from about '43 to '53, as I recall--

W: Right.

F: And then came up here to be Chief Justice and stayed 16 - 17 years--

W: Sixteen.

F: Until the summer of '69, right?

W: Right.

F: So that gives you a fairly long period in the public eye. And of course I'm aware of your career previous to that. When did you first become aware of Lyndon Johnson?

W: I've tried to give a little thought to that, and I don't remember just when it was, because I've been in the public service for over fifty years, and all of it at times caused me to come back to Washington. And when I was a district attorney in Oakland [California] from 1925 until 1938, I used to come back here to Washington occasionally on matters concerning crime prevention, and on welfare matters and things of that kind. And along the line some place, I met President Johnson.

F: This is probably in his congressional days?

W: I'm not sure whether it was during his congressional days or whether it was first when he was a senator.

F: Well now, you know he became a senator in November of '48, which was the time that you were running for Vice President.

W: Well I'm sure I knew him long before that, yes, I did.

F: Did you campaign at all in Texas in '48, do you recall?

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W: Went through one of the airports there, I've forgotten which one it was, and I got in about two hours late; there was hardly anybody there!

F: That's normal, isn't it?

W: Yes.

F: Right, well, he was busy with his own career—

W: Oh, sure.

F: --trying to get elected at that time, so he wouldn't have paid any attention to you one way or another in 148.

W: He was on the other ticket anyway!

F: Right. Then he became Senate Minority Leader in 1950, and then went on from that to be Senate Majority Leader--in 1954 it was that he became Senate Majority Leader. Did you know him at all through William Knowland?

W: Yes, I did, and I always remember that when I would run across Senator Johnson he would speak affectionately about Senator Knowland, when he was either majority or minority leader and Knowland was his counterpart. And he spoke very affectionately of him, and Senator Knowland always spoke the same of him.

F: Incidentally, Senator Knowland told me--I saw him some time in the past year out in Oakland at the Tribune office--that President Johnson still sent him an occasionally note or something on a birthday or some other occasion when he read something about him in the paper; that they still kept in kind of a loose touch with each other.

W: Yes, I can understand that because they both spoke very cordially of each other in all the times their names were introduced into a conversation.

F: You never had any real relationship with him though until you came up here as Chief Justice, did you?

W: Well, I had so many different things before the committees here that I think I did. But I would have a hard time telling you just what it was, because I was here on matters of relief and I know he was interested in those matters. I was here talking about water--water conservation. And there was a relationship between the Colorado and the Rio Grande on the Mexican Treaty, and things of that kind. And yes, I knew him at that time and ran across him in committee work.

F: Your state and Texas would have been competitors for electronics and aeronautics installations at that period?

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W: No, I don't think I was interested in those installations down there at that time.

F: In your governorship, do you have any recollection of his ever coming to California on some sort of either investigating or placement project, or something of that order?

W: At the moment I do not.

F: So you came up here then in '53 to be Chief Justice.

W: Right.

F: Did you speak with him as you recall at that time about confirmation--or what is protocol in this case? Or do you just leave it sort of to the Gods?

W: Leave it to the Gods! That's all one can do. No, I'm sure I never spoke to a single senator. A few of them in passing would say to me, "Well, I'm for your confirmation."

F: As I recall, confirmation went through very smoothly.

W: Yes. [We] only had one drawback on it. There was an old political enemy of mine out in California by the name of Bill Keck who was head of the Superior Oil Company. He had tried to bedevil me for many years when I was governor. And when I was appointed he brought back the assistant of Gerald L. K. Smith to testify against me and then he had some Trotskyite from, I think, South Dakota or North Dakota, some place up there. And Senator Langer carried those in his pocket for months, you know, and always said to people that there were serious charges leveled but he never would have a hearing, you see. So I just sat tight and didn't make any move of any kind, ever spoke to anybody, and eventually it went through--

F: Joe McCarthy didn't give you any problem?

W: Not at that time, not at that time, no.

F: He hadn't discovered you yet?

W: Yes he had. He had discovered me because I had attended a governors' conference once at Salt Lake [City], Utah, and the press was having a conference for a few governors. And they called me first one morning and asked me if I would submit to a conference and I did. And the very first thing they asked me when I got in there was what I thought of Senator McCarthy. And I told them that I did not hold his views in high estimation, and that I thought they were injurious to the country. Then after that I think all the other governors expressed the same view.

F: Waiting for someone to lead.

W: But, no, he didn't manifest any great bitterness against me at that time.

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F: Incidentally, I always thought you and she were both honored, but the right wing in Texas later on put up signs to impeach Earl Warren and Lady Bird, which I thought was a nice coupling.

W: Oh, no! Did they put us together?

F: Yes, they had you together, and I didn't know who was more honored in this case.

W: Well, I feel honored too. I didn't know that. Was that the John Birch Society?

F: Right.

W: Well, I never heard of that! I never heard of that! Why were they against her?

F: Well, because of her junkyard removal, highway beautification, they felt the attempt to do away with road signs and so on, you know.

W: Well I can understand why they were against me, because I was against everything they were for.

F: But they put the two of you together.

W: I never took any great offense at it; in fact, I could smile at it, but it took me a little time to get my wife accustomed to smiling at those signs. But she finally got so she could smile at them too.

F: In those middle 1950's and latter 1950's, did you see much of the Senate Majority Leader? Did you have any opportunity?

W: No.

F: That's almost purely social, isn't it?

W: No, no. Really, about the only times I would see him would be at some gathering like the Gridiron Club or the Alfalfa Club or probably at some joint session of Congress or something of that kind. We had no intimate talks or discussions of business.

F: Do you keep the lines between the Congress and the Court pretty clean-cut as far as your ever visiting with an important senator on upcoming legislation? Do they ever seek your advice, or do they stay away?

W: They stay away, and I think advisedly. Not as a matter of antagonism, nothing like that, but as respecting the separation of powers. And I think it's good. I think it's a wholesome thing to remain separate.

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F: If they've got some apprehension about constitutionality they can just go to the justice department with that.

W: That's right, that's right. I think that's the place to do it. I think in years gone by there have been some notable exceptions of that in the history of the Court, but I think that the normal procedure is not to do that. And Washington pointed the way, you know, with his very first year, when he asked the Court about the constitutionality of his treaty with England, I think, and the Court told him that they didn't give advisory opinions. And that's what we rely on more than anything else. I think it's wise under our system to be that way.

F: Do they ever talk to the Chief Justice about Court appointments, that is, those that are pending?

W: Most times they do not. Eisenhower never--now, I say to the Supreme Court.

F: Yes.

W: I don't know, he might have to individuals on the Court, but not to me. Eisenhower never, never--

F: Not to Chief Justice Warren.

W: No. President Kennedy did ask me my views at one time when there was a vacancy. And President Johnson, when I gave him my notification of retirement, asked me if I had any candidates, and I said, "No, Mr. President, that's your problem."

F: You had the somewhat rare opportunity in your long career to swear in four Presidents. The President swears in the Vice President, as I recall. Is there anything memorable about the four ceremonies?

W: No, they're exactly the same pattern as far as--

F: Except for the snow when Kennedy--

W: Oh my goodness yes, wasn't that something! Yes, I remember that. It's according to pattern. I asked the White House on each occasion how they would like to have the oath broken up into little sections, you know, to say it. And they'd usually send up a card that would bracket it, don't you see, and that's about all there was to it.

F: You don't have any kind of dress rehearsal on it? You just show up at the appointed time?

W: No, none at all. We're just there and abide by whoever's handling the ceremony and so forth.

F: When you have had to deliver decisions that might not have pleased an administration, have the Presidents or the White House in general, White House staff, ever let you know that you

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were making life from their standpoint more difficult for them? Do they ever comment on decisions to you, or do they stay clear?

W: I don't think I've ever had a White House staff member say anything to me one way or the other. President Eisenhower has been reputed to have said that the biggest damn fool thing he ever did was to appoint me!

F: But he never told you that!

W: Never told me that.

F: These various civil rights decisions, or so-called law and order decisions, you rendered them and stepped back and then let the politicians take over.

W: That's right, yes. Or you might say in the beginning, the politicians all stepped out and left it in the Court's lap to determine those things. That's one reason that I think President Johnson rendered such a distinct service, because he put on the books the legislation that should have been there almost a hundred years before. And if he had, the Supreme Court would never have been obliged to make so many civil rights decisions from the bare bones of the Constitution.

F: You must have felt at times terribly isolated and exposed in some of those decisions.

W: We did indeed. And a lot of people are of the opinion that the Supreme Court just reached out and grabbed onto those issues and decided them in opposition to Congress and so forth. But, really, all the court was doing was filling a vacuum because Congress had not acted.

Now I don't lay all that blame on Congress, because Congress had passed the Civil Rights Act and the Supreme Court had watered it down in the 19th Century, you know. And as a result there was just a great gap there from that time on until the time Lyndon Johnson came on. Up to that time we just had to deal with the bare bones of the Constitution on the question of equal protection of the laws, what the limits of that were, and due process of law; those were the two things we had to be guided by as they appeared in the 14th Amendment. But when the Voting Rights Act came along and the Public Facilities Act came along, where Congress acted to say those things, it greatly helped the Court. I was delighted to see that legislation, because then we could deal with acts of Congress, don't you see; and if we decided something that the Congress didn't like particularly, they could change their act. But when we're dealing with just the Constitution itself the relationship between the different agencies of government is thrown out of kilter.

F: Do you get a sort of, at least a spiritual, conflict between the Declaration of Independence and the Constitution?

W: Oh yes.

F: One proclaiming one thing and--

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- W: Oh yes. I think we have to remember that the Declaration of Independence was an emotional and a spiritual expression of the American people, but it wasn't the consensus of what people thought about how they were to be governed. They wanted independence, they wanted independence for everyone, they spoke in clear terms. But when they got to drafting the Constitution of the United States, they had all of the state problems to face, you know, the relationship between the states--the large and the small, the slave states and the free states, and the industrial states and the plantation states and all of those things. And the Constitution is a series of a lot of compromises that are absolutely essential in order to bring about a nation. But in the Declaration of Independence they were just stating full force all of their feelings and sentiments, and the Constitution doesn't bear out everything that was said, it took about eighty years to bring that about.
- F: Right. Does the Court--it seems to sort of pursue themes in a sense. Is that just a matter that some aspects of our private and public lives have not been worked over, over, say, several generations, and they are overdue to be looked at? I'm thinking about the fact that you have almost a kind of a binge of civil rights decisions; then you go on to a group of obscenity cases; and then you go on the individual rights like the Escobedo case and so on. Do you think in terms of themes at the opening of a fall session, or is it just a matter that these things all come to a head at the same time?
- W: No, the opinions of the Supreme Court are merely a reflection of the times in which they're acting. Now you can divide up the opinions of the Court according to the eras. Take the Marshall era, the Court was charged with determining whether we could have a nation strong enough to be viable.
- F: Sort of who's in charge here?
- W: Yes, who's going to run the show, and whether it was strong enough to be viable because the nations of the world looked on us with suspicion and many of them were contemptuous of us because of our weakness and so forth. And the cases that came to the Supreme Court, and that Chief Justice Marshall is so noted for, were cases that determined actually the viability of the federal government. And then we got along into the question of slavery and so forth and that for years--
- F: States' rights.
- W: The question of states' rights, strict construction, and all those things that didn't completely come to the surface and be decided until the 13th, 14th and 15th Amendments after-the Civil War.

And then after that we had the industrial revolution. There was brought into the jurisprudence of the Court the relationship of corporations to the state, you know, whether they were persons or not. And most of it was the rights of business and the rights of corporations rather than the rights of individuals. Not because the Court chose it that way,

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I'm sure, but because that's the kind of litigation that came to us because of the thinking of the times.

F: Property had become important.

W: And the conditions of the times and the importance of the industrial revolution, don't you see.

And then along came the Roosevelt era. And from that time on you have the rights of individuals, the rights of the poor, the rights of minority groups, and all of those people.

But so many people are of the opinion that if the members of the Supreme Court don't like something that's happening in the country it just reaches out and brings that into the Court and starts writing opinions on it, which of course is as contrary to the fact as anything could be, because the Supreme Court is a Court of very limited jurisdiction. And its litigation must pass through the hierarchy of either a state court or the federal courts before it ever comes to the Supreme Court, and then and only then can the Supreme Court render an opinion on any subject at all. But it's hard for people to understand that. They think that the Court comes here with predetermined ideas and then goes on from there to--

F: You would dismiss the charge that the Warren Court, so-called, was a sociological Court?

W: I don't know what you mean by sociological.

F: I haven't known either, but I've seen the charge!

W: I think this. You know, there are so many people that say, "You can't look to the courts to change social conditions in the country. That's the business of Congress." Of course it is the business of Congress. But at the same time, almost every important decision of the Supreme Court changes some social condition in the country, and the Court shouldn't run away from its jurisdiction just because it affects a social condition.

F: As far as you can determine, the Court never avoided a decision because it thought it was going to be a sort of hot issue?

W: I think in the past it has been done many times, and I think that where that has been done it's similar to sweeping dust under the rug and leaving it for a future generation. And we're paying the price right now. If the Supreme Court in the first civil rights cases had gone right down the line on them, I think we would have avoided much that we're troubled by at the present time.

F: I think that's one thing that annoys you--annoys both of us probably--is the fact that you had to catch up for past omissions. They could have settled some of this seventy-five years ago and it would have been routine now.

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W: Long ago they could have settled it--and should have settled it--it seems to me right there. But I was very much concerned about that a year or two ago, and I had one of my law clerks spend a lot of time going back over the old journals of the Supreme Court to see what civil rights cases the Court had not taken where it should have. And we just found that in those days--particularly after the civil rights cases were determined--that they didn't bring those cases to Court. I suppose in frustration a lot of people thought what's the use of bringing them. And then the Negroes were so poor and there were so few Negro lawyers that there was no impetus on their part to bring things to the Supreme Court, and they just didn't get here. But after we had World War II and the four Freedoms were announced and people all over the world were thinking in terms of freedom, it took hold of people in our country and they started thinking that if we could make the whole world free we ought to be making our own people free. And we got more litigation of that kind and some of it prospered in the Supreme Court; it effected more. More and more of it came.

F: All you need is some woebegone person to get a decision and it encourages me and then, "Well, I ought to give it a try."

W: Yes. For instance, in these petitions we get from prisoners in the courts, if the Court gives one favorable opinion on some subject, you'll find a spate of the cases, maybe hundreds of them, come in a matter of months from all over the country. Everyone stimulates the activity.

F: I gather every prison in a sense is full of sort of potential lawyers anyhow; many of them that are fairly literate must spend a lot of their time searching law books and writing petitions and so on.

W: Oh yes, oh yes. I think now there are something like sixteen hundred of those that come in every year to us, you know. But it isn't a matter of any great amount of work, because over fifteen hundred of them will be cases in which we couldn't have any jurisdiction because maybe they haven't gone through the courts below that would entitle them to come here, don't you see, and have never been decided below. But some of the most important cases that we have had in recent years come from that source. The Gideon case for instance, you know, and cases of that kind.

F: I read Tony Lewis' book on that.

W: Yes, yes.

F: Before we get into Johnson specifically, you've made a number of foreign trips to sensitive places. You saw Khrushchev, for instance, in August of '63 and you went to Poland later, and so on. Do you ever get any sort of briefing from the White House on this? Are you ever in the position of being a semi-official emissary from the country, or do you just go strictly as Earl Warren, Chief Justice?

W: No. We never get any briefing from the White House. I did make a number of trips over there on this exchange program we have where the State Department asks us to go over.

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F: Sends experts.

W: But the only briefing I would have would be a day or so before we went. My wife and I would go in and sit down with a half-dozen people in the State Department, and I would ask some questions about the country we were going to and they would tell me a little bit about it, but nothing of a nature that would put any responsibility on me to do anything and never make any reports of any kind of anybody on what we have seen. They are merely goodwill missions I have been on, merely for the purpose of establishing goodwill between the nations.

F: Let's come on up to the Johnson Administration per se. Of course there was the assassination in Dallas. Now then, what was your role in this? Where were you at the time of the assassination, were you here in Washington?

W: I was right in that conference room, we were in conference at the time. And my secretary, who is still with me, sent in a message to me telling me that the word had come from Texas that he had been shot. We immediately adjourned because the word wasn't that he had been killed, and we adjourned and then within a half-hour or so, I think, we got the message that he was dead.

F: Were you involved at all in this decision as to where the oath should be taken?

W: No, never knew a thing about that. Never knew a thing about it.

F: Let's just talk a little bit about how the Warren Commission came into being. That must have been an awful--

W: I might say to you, that the first contact I had with it [was when] we were told that President Johnson would arrive at the airport at a certain time in the evening. And I went out there and greeted him.

F: Were you asked to come, or did you just go?

W: We were told--it was suggested that it would be appropriate for me to go out. I don't know that any other Justice of the Court went--I think I probably was the only one who went. There may have been some others, but I don't know if they did.

F: Did you get to talk with him when he came off the plane?

W: Only just briefly. I just expressed my condolences and my best wishes for him, and that was all. It was just so quick and everything, and such a sad time that we don't--my recollection is not too clear of that weekend anyway.

F: Right, it fuses a little in all that went on.

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W: Oh yes.

F: Now then, how did you get going on the Warren Commission? I know that was an awful intrusion into your life in many ways.

W: I had a call from the solicitor general and the deputy attorney general. They said they wanted to see me, and I said, "Certainly, come right over." So they came over. They told me that the President was contemplating setting up a commission to investigate the assassination of President Kennedy, and they asked me if I would be a member of it. I think they asked me if I would be chairman of it, I'm not sure about that, but I know they asked me if I would be a member of it. And I told them that I thought I should not do that; that we had discussed many times in the Court some of the occurrences of the past--Justice Roberts when he went over on the Pearl Harbor affair; Bob Jackson when he went to Nuremberg; and some earlier ones too. And practically all of us had expressed the belief that it was not wise for members of the Supreme Court to accept positions on presidential commissions. I had personally expressed that view and I still think as a general thing it's a sound rule. Because in the first place, we have enough work to do here; and in the second place, it does get you over into another department of government which is supposed to be separated.

And so I told them that, and told them just about what I've told you, that we'd all expressed ourselves to that effect. I told them I thought I shouldn't do it, and I made some suggestions to them as to people whom they might get who would fill the purpose. And I thought that was the end of it.

And then in about an hour I got a phone call from the White House and was asked if I could come up and see the President. And I said, "Certainly," so I went up there. And the President told me that he was greatly disturbed by the rumors that were going around the world about a conspiracy and so forth, and that he thought that it might--because it involved both Khrushchev and Castro--that it might even catapult us into a nuclear war if it got a head start, you know, and kept growing.

F: Right, if it got some momentum.

W: And he said that he had just been talking to McNamara, who was Secretary of Defense then, and that McNamara had told him that if we got into a nuclear war that at the first strike we would lose sixty million people. And he impressed upon me the great danger that was involved in having something develop from all of this talk. He said that he had talked to the leaders of both parties and that the members of Congress--Dick Russell and Boggs on the Democratic side and Ford and Cooper on the other side--and John McCloy from New York and Allen Dulles would be willing to serve on that commission if I was to head it up. And he said, "I think this thing is of such great importance that the world is entitled to have the thing presided over by the highest judicial officer of the United States." And he said to me, "You've worn a uniform, you were in the Army in World War I," and he said, "This job is more important than anything you ever did in the uniform."

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And I said, "Well, Mr. President, I've told you what my views are, and I also told the solicitor general and the attorney general, but" I said, "things can get to a place where your own personal views shouldn't count. And if you think it is this important that I should do it, why, I'll consider that my own personal views don't count, and I will do it."

And that's about the gist of it. It took a little longer perhaps than what it did here but not a great deal longer either. So that's the way it came about.

F: Getting that organized and getting a modus operandi must have been terribly time consuming at first.

W: At first! It was right up to the last days! I got them to rent the building right across the street here from the Court and I would just come here to the Court for every conference, come here for every session of the Court, and then as soon as that was over I would run over there to that building and work on that until maybe midnight. It lasted for ten months. I think it took a good bit out of me, too, to be doing that, because I didn't want to give up my work on the Court. I thought that would be wrong to do that because with eight men on the Court, you know, so often you wouldn't have any decision at all--you'd just have to take the decision of the lower court. So I thought I had to carry on my work, and I did carry on my work throughout the year.

F: Did you pick the executive director or did that come out of the White House?

W: Oh no, we did everything. The White House never gave us an instruction, never, never even looked at our work until I took it up to the President. Never commented--

F: The President never made suggestions?

W: Never once in any way, shape or form. In fact we didn't talk to him about it. I would have talked to him a little about it because I think it would have been a little better if he had testified rather than to just give a statement. I think it would have been a little better. Not that the result would have been any different, but I think that on the record it would have looked a little better. But he sent word to us that he would give a statement and Mrs. Johnson would give a statement, so we didn't even discuss it with him.

F: What did John Connally do? I don't recall.

W: John Connally testified.

F: He testified, so you could ask him questions.

W: We did ask him questions.

F: Was there anyone that you felt you should have seen that you couldn't get at?

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W: I've never been able to think of one person that we should have called that we did not call. Now I'll tell you, the President gave us the broadest powers, powers that we didn't even use you know. Broadest powers to get anything in the government to use--

F: You could subpoena, you could swear--

W: We could get any documents or anything else that we wanted, and he gave us the power of citing them for contempt if they didn't produce it. And we had one--

F: You had no budget limitations?

W: Oh no. There was just no problem of that kind at all, nothing. But no limitations of any kind put on us. We were just free agents, and did everything we wanted.

F: The members of the commission, were they pretty much united in their ideas of procedure, or did you have more than one sort of set of opinions? Were you factionalized at all as far as the commission was concerned, on who ought to be seen, or how you ought to proceed?

W: No. We had as our chief counsel Lee Rankin, who was a former solicitor general and a very competent and objective man, and we left the management of it very much to him, and handling. See, we had not only people from all these departments, but we had twenty lawyers of our own, you know, and we had them all over the country taking depositions of people whom we couldn't bring here and so forth. And the management of the job was quite a job, but Lee [Rankin] was up to it. He had some good capable fellows with him, and we had no need to interfere on any of that.

F: Now you had to work very hard, but you did have the advantage of being able to stay in the neighborhood. What about people like McCloy who had to come down from New York, other people away from Washington, what did they do?

W: Jack McCloy I don't believe ever missed a meeting. I don't think Allen Dulles ever missed a meeting. Hale Boggs and Ford and Cooper sometimes were running back and forth from this building where we met over to the Congress--

F: Trying to make quorum calls?

W: To make quorum calls and so forth, but they would always come back. They would be there every time and come back. The only one who did not come regularly was Dick Russell. Senator Russell was not there very much, and I was disturbed about it because he was there so little. I wanted to keep him informed, and of course we did keep him informed all the time through the transcripts that we sent them, but I knew he didn't have time to read all of that either. So I had Lee Rankin go over to him and tell him, "Now, Senator, we're very much interested in your being fully informed about this and everything that goes on. We know, however, that you have your committee work and you are bound by it, but if you can't come yourself, if you have any lawyer, any lawyer you want to pick, let him come. Let him come and you can inform yourself from him on your own time. Any time you

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want. And we'll be glad to take your lawyer in with us and have him see everything that goes on."

Well, that appealed to him and he did appoint a young woman to be there, and she was very attentive and she was there and ever interested. I've forgotten her name at the moment, too, but of course it appears in the report. But she attended the meetings very faithfully and I have no doubt communicated with him regularly.

F: Were most witnesses disposed to be completely cooperative, or did you have to fight a good number of them?

W: No, we had very, very little trouble of any kind except from one fellow by the name of Mark Lane. And he was the only one that treated the commission with contempt.

F: And still does!

W: He still does, yes. But he was giving lectures, saying that he had people who could put Oswald and Ruby and some big oil men of Texas--see he was on the leftist conspiracy theory--some big oil men of Texas in Ruby's establishment there, entering into this conspiracy. He said he had witnesses to that effect. We called him to the stand, and asked him about it. He said that it was confidential to him and that he would not divulge who the witness was. And so I said to him, "Well, if you can get the consent of your informant, will you do it then?" And he said, "Yes, I will." And I said, "All right, if we excuse you will you try to do it, try to get the consent?" So he said, "Yes," he would, and so we let him go. But he never did. And he went over to Europe and made a series of speeches over there telling the same thing, you see, so we subpoenaed him from Europe, brought him back here. And I'm sorry to say we had to pay his expenses to get him back in this country. [We] put him on the stand again and he still refused, claimed that he was a writer and he had a privilege and so forth. He had no such privilege at all. First he was a lawyer, and then next he was a writer. He had no such privilege at all. And we could have cited him for contempt, and I'm sure a court would have sustained us because he was really contemptuous, but I knew that if we did we'd be in the courts for a long time and we never could make our report final. So we just put all of this in the report and let it go for what it's worth, don't you see. But it's pure fabrication, there's absolutely nothing to it, nothing corroborative of it. And he never has mentioned to this day, as far as I can find out, the name of any witness who would so testify.

F: Did you have much trouble from the sort of volunteers that come out of the woodwork any time there's a tragedy, the cranks and those people who just want a day in the sun?

W: Not as much as we expected. Very little. Very, very little. Some depositions were taken that I'm sure were of crank type, you know, but in the first place we had enough to keep us busy. We had the FBI, we had the Secret Service, we had the Attorney General's office of Texas, we had the District Attorney of Dallas County, we had the police of Dallas County, and we had the Army Intelligence and the Navy Intelligence--

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F: CIA?

W: CIA, yes. We had the CIA, too, yes we did, because we're dealing with Mexico and Cuba and so forth, and we had to have them. We just had all of those governmental agencies, you know, and we had no trouble at all of course with any of those witnesses. There was no conflict at all between them on anything. So far as getting evidence is concerned, we had no problems at all. Even Jack Ruby, I went down and took Jack Ruby's testimony myself-- he wouldn't talk to anybody but me, wouldn't talk to anybody but me. And he wanted to come up here to Washington and wanted the FBI to give him a lie detector test here in Washington before he'd talk to me. And I discouraged him from that because I was afraid of moving him from Dallas up here--anything could happen. We'd had enough of that, you know, and so I didn't want to do that. So I discouraged him from doing that. I told him we would get a lie detector, give him a lie detector test down there if he wanted it, or I'd have the FBI come down and give him a lie detector test. And I think the FBI did go down there and give him a lie detector test, and he cleared it all right. And I was satisfied myself that he didn't know and never did know Oswald, never heard of him. But the fellow was clearly delusional when I talked to him. He took me aside and he said, "Hear those voices, hear those voices?" He thought they were Jewish children and Jewish women who were being put to death in the building there.

F: Oh!

W: Oh, the poor fellow, I really felt sorry for him, very sorry for him.

F: Was there any attempt in his trial down there to get the commission involved?

W: I don't think so, never heard of it if there was. No.

F: Who was the final arbiter on the list of people who should be seen, Rankin?

W: Well, we never had any--

F: Did you just sort of thrash this out together?

W: We just never had any controversy as to it--anybody that anybody on the commission or the staff wanted to interview, we'd take his deposition and bring him in there.

F: You tried to be absolutely complete?

W: Oh yes, oh yes, and we kept it open a much greater length than was necessary to be sure of that. There was no difficulty of any kind between the commission as to who should testify or anything.

F: There must have been a period in there when you thought you'd never get through, when you're along about the middle of it.

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W: Well, I'll tell you. We thought we were through at one time and then somebody, some group down there in Texas--I don't know what group it was, but they brought up the statement--I don't know whether it was a newspaper article or whether it was an individual--brought up the statement that Oswald on his way down to Mexico en route to Cuba stopped at this county where they had had so much trouble down there over corruption and so forth. And said those politicians down there were close friends of President Johnson, and that he was down there and spent two or three hours with them before he went to Mexico. Well, it sounded absurd, but we felt we couldn't let that go without going into it. So we held the thing open, I imagine a couple of weeks, until we ran that down. And we found that at the time he was suppose to be down there he was up in the office in Dallas drawing unemployment compensation. And we thoroughly discredited that story, there wasn't anything to it. And then when we finished that we were ready to report.

F: What is there, just something in the human being that makes him want to believe in conspiracy?

W: Yes. I think in a sense it's historical, particularly with Europeans. Most of their assassinations grew out of palace guard defections and things of that kind, or another group that was warlike against them. And it's the same in South America, all of their's are the same way, where on the contrary here, practically all of ours have just been demented people.

It was a demented person who, all except the Lincoln one I guess--Garfield's was a demented person, McKinley's was a demented person, the one who killed Cermak when he shot at Roosevelt was a demented person. I think the one who tried to shoot Theodore Roosevelt was a demented person. But our history is different. But over there they think in terms of conspiracy, and you just can't talk it out of them.

Now I was down in Peru a few years ago. When I went down there this was a pretty hot issue, you know, at the time, and I think it was Ambassador Jones who was down there, and he suggested to me that I have a press conference down there on this subject. And I never had one up here, I thought the report was sufficient. But I said, "All right, if you think it will help out I'll do it." So I answered their questions, I guess for an hour and a half anyway, and then they all just listened very attentively and nobody argued with me and then at the end someone asked something about it, I've forgotten what the question was, but I asked them "Have you read the report?" No, they hadn't. "Well," I said, "I know you could, because we sent reports to your libraries here, we saw to it that you have it. So it's available to you there."

F: All the binational centers.

W: Yes. "But you didn't read it." "No," [they said] "Then how did you get your information?" Well, they were all over the lot, they didn't know how they got their information and so forth, but I'm sure that when it was all over that I didn't change a person's view. I think the whole outfit of them had the idea it was a conspiracy.

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F: I've had three protracted tours down there, and I've always had to face up to this. I never changed anybody's mind.

W: I was over in Ethiopia and the ambassador over there asked me to do the same thing and I did have a similar conference over there, but they never--I didn't change anybody's idea, they all thought it was. And the strange part of it is that there's one theory of conspiracy on the right; another theory of conspiracy on the left; and they both merge by saying it was a conspiracy. Both agree that it was a conspiracy, only they are a thousand miles apart as to what kind of conspiracy.

F: You either believe that Oswald was a leftist and therefore it was a leftist conspiracy, or since he was a leftist he was in a sense a double agent representing the right and appearing left.

W: Well, I don't think they carry it out to that extent. No, no they think it was a right wing conspiracy, big oil men, and some of them go so far as to say they were friends of the President. But there was absolutely no evidence of that kind, absolutely none.

F: Now all of this investigation of yours was going on during 1964, which is an election year, and of course you've got one of the principals, President Johnson, in a sense involved in your findings. Did this pose any particular problem for you? The fact that you are investigating at a time that one of the men that is a principal in the cast of characters is running for office?

W: This wasn't in the election year that we did this, was it? This was in '63.

F: No, it was November 30, after Kennedy was shot--

W: Of '62?

F: Of '63. And then Johnson had to run in '64.

W: My gosh, I guess that's right.

F: It must not have been much of a factor.

W: No, no, really it was no factor. It was no factor at all, no factor at all.

F: When you took the report back to the President--to the White House--finally, did the whole commission go, or just about all of them?

W: Yes, I think we all went.

F: Was there some sort of a ceremony of receiving the report, or did you just walk in and hand it to the President, or what?

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W: We just walked in there and I handed it to the President and told him that was--

F: What did you do, take it in a wheelbarrow?

W: No, I just gave him the report, not the evidence. The evidence is twenty-six volumes, but I just gave him the report, which is a single volume. And, no, I just handed the report to him and asked to be discharged, don't you see, and he made a few gracious remarks, and we went out.

F: Did he ever talk to you about it at all?

W: No, I'm sorry he didn't. Because of a statement he made over the air in--

F: Was that the Cronkite interview?

W: CBS, yes. He stated there, apparently, not directly over the air but in the preparation for that, that he had never been satisfied that it wasn't a foreign conspiracy. But there just wasn't any evidence at all to that effect and I was sorry that he--

F: I've wondered two things. I've wondered, one, why he said it; and two, why it was that the press never really picked it up more. In general the statement didn't get too much publicity.

W: What they did was this. You know, the press did say that there was a provision in the contract that he had with CBS that he could delete anything that involved internal security, but that there was a provision also for arbitration in the event that there was a difference of opinion as to whether it was in the interest or against the interest of internal security. And they settled the thing apparently by stating that it might be eliminated but that he had stated it and had withdrawn it on the grounds--which made it a little worse than if he had just said it. But no, I've tried to figure why he said it. I know he was very devoted to Dick Russell and I just sort of thought that he said that somewhat to placate Dick Russell because Dick Russell previously had made the same kind of a statement, although he signed the report just like the rest of us, in which we said there was no evidence of anything of that kind.

F: There was no strong tendency on anybody's part to dissent?

W: No. There were one or two things that Russell was concerned about but it was phrased in a manner that caused him to withdraw any objection to it and he signed it.

F: What happened? I know a committee can't write a report and ever finish because you and I would hang on one sentence, where to put the comma. Did Rankin in effect write a final report and the rest of you then sit on it and work it over, or how did you whip it into shape? Or did you do sections?

W: Let me see whether we did that piecemeal or not.

F: Well, it's not important.

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- W: I really don't recall our procedure in doing that, but everybody took plenty of time to scrutinize the whole thing.
- F: You never did feel a deadline pressure so that you hurried your work?
- W: No, sir, we did not.
- F: You were just going to get through whenever you finished.
- W: Absolutely not, there was no deadline of any kind for us, no deadline of any kind.
- F: Did you get any criticism from the outside that you were dragging your feet? I'm sure people expected you to name a commission on one day and finish the report the next, you've always got that sort of person.
- W: Oh yes, and then there are people now who say we didn't take enough time to do it. We took ten months! And really that was the kind of a murder case that would be tried at best in two or three days, it was that simple. The only reason it took us so long was that we ran down everything that we thought could possibly bear upon it, and I never have heard of one thing that anybody has raised against the report in that regard--that we didn't interview people, or didn't let them testify.
- F: No one has come forward since with any startling evidence?
- W: Not one thing. Not one thing. Those who were opposed to it on the conspiracy theory say, "Well, this might have happened, that might have happened."
- F: That's a little bit like the centuries old arguments on what a sentence in the New Testament means.
- W: Sure, sure.
- F: You and I read it, but we don't see it the same.
- W: But they haven't developed one fact, as I review the whole thing. And I occasionally see someone who worked on it--either one of the lawyers or one of the members of the commission--and I ask them if they have ever heard of anything to discredit the report factually, and they say no, they've never heard of anything. And I think that's true.
- F: Coming back to the Supreme Court, your work load gets heavier all the time, you keep the same number of judges. If you ever enlarge the Court, who's going to initiate that, the President, the Congress? Would the Court itself petition for relief?
- W: Well, I earnestly hope that it will not be enlarged, for the simple reason that the Constitution says that there shall be one Supreme Court. And it has always been interpreted by the

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Supreme Court from the very beginning that it means the only action we can have by the Supreme Court is to have them all sitting at one time. Now, if we double the size of the Court, it would mean about three times as much work for everybody. Because you know it's one thing to have a conference with nine men; it's another thing to have a conference with eighteen men. And it's one thing to try to get agreement among nine men, and an infinitely harder thing to get agreement with nineteen men. And that fact that we act together and as a Court, no panels as they have on these other Courts, makes it imperative, it seems to me, that we do not make the Court too large. And nine is really large enough.

F: When Justice Goldberg resigned to go to the United Nations, did he talk with you about that decision, because it must have been a tremendous personal decision on his part?

W: Well, I saw Arthur the day before. He came from Washington with the President. I was out in California, and I went to Illinois to the funeral [of Adlai Stevenson] and I saw Arthur there. And Arthur told me then that there was talk of his going to the United Nations, but that he was rather inclined against it. I told him that I would have the same feeling because I would hate to see him leave the Court. But he had the misfortune of going back on the plane with the President that night, and the next morning it was announced in the press that he was going to--

F: The President can be almost irresistible if he--

W: Oh when he puts on the heat, you know, and pictures it the way he can, it's pretty tough to say no.

F: When you resigned there in the early summer of '68, or announced that you would resign, the press immediately took it up and some of Johnson's opponents took it up--the fact that your statement was ambiguous. Did you think it was ambiguous?

W: I don't to this day. I tell you, there has developed a practice in the country here of a lot of judges--federal judges saying, "I herewith tender my resignation to take effect upon the appointment and qualification of my successor." Now I did not do that. I said, "Dear Mr. President. I hereby tender my retirement under such-and-such a section of Act so-and-so at your pleasure." He could have phoned me back, or written me a letter that day, and said, "I accept it."

F: "Good night," yes.

W: "Good night," or he could have waited. Now I think that's the only way a man should retire from his Court because you don't know from day to day what kind of an issue is going to come before the Court. We've had things in the summertime, you know. Take that Girard case over in Japan that came here, and I had to have a special session in there. We had the Little Rock case, I had to have a special session in the middle of the summer. You must have a full court. I waited until the last conference of the term so that we wouldn't be in any bind like that, don't you see, and then I said to the President, "I retire at your pleasure," which meant that just as soon as he got somebody that he could put in there, why that was

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my pleasure. I thought it would be wrong to say, "I retire as of today." The President did act in time, if the Congress had gone along with him, you know, so that it would have been filled.

F: Did he talk to you at all about elevating Abe Fortas to the Chief Justiceship?

W: On the day that I came to his office and told him that I intended to retire--oh I think I tendered him the letter at that time--he said to me, "Well, have you got any candidates?" And I said, "No, Mr. President, that's your problem." And he thought a moment and he said, "What do you think about Abe Fortas?" And I said, "I think Abe would be a good Chief Justice." And that was it, that's all we said.

F: More than any roomful of men will always talk about somebody who's absent, do the Justices on the Supreme Court ever sort of talk about who should retire?

W: Well, it never happened in my time and I don't think it's happened in the last two years. But it has happened in the past, I think, because when Field was a young man they delegated him to go to tell--I've forgotten the name of the Justice--but anyway, he was showing some signs of senility, and so Field went and talked him out of it. And then thirty-three years later Field was in the same condition and they sent a delegation to talk to him, and when they came to him he didn't want to retire.

F: It was different when he was doing it.

W: And when they asked him if he didn't remember the day he went to the other Justice, he said, "Yes, I remember it and it was the dirtiest day's work I ever did in my life!"

F: What I was getting at, after the withdrawal of the nomination of Justice Fortas to be Chief Justice, I wondered whether there was any feeling that would have been communicated to Justice Fortas that perhaps he should leave the Court?

W: As to whether it was a good or bad choice?

F: No, whether he should leave the Court, because he still had his position as an associate justice--

W: No, no, nothing like that.

F: That was entirely his own decision?

W: I never heard any discussion on the Court as to the propriety of Abe Fortas being on the Court, then or afterwards.

F: Did you get the feeling, that at least the original opposition to Fortas was a sort of a rejection of the Warren Court by a lot of the people who had been stirred up through the years?

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- W: I think so in one respect, yes, I do. And another part of it was highly political in the sense that it was close to a campaign year.
- F: Was that a valid issue?
- W: No, I don't think so, but it's used. It's used, but I don't think it's a valid issue.
- F: Should you place any credence in the charge that was made that you showed a certain unseemly haste so that Nixon wouldn't get to make the first appointment?
- W: No, I didn't. This was before Nixon was nominated; this was before Johnson was nominated; this was in June before either of them were nominated. I would have been content with anybody President Johnson appointed, I thought he was friendly to the Court. And it would have fitted in with my time schedule because, gee, I was 78 years old, and I believe in retirement.
- F: And you have worked a little bit in your life.
- W: I believe in retirement. I believe there should be a compulsory date of retirement in the federal service, and I would be for it for all the federal courts any time the Congress wants to do the same thing for itself and the executive branch of the government, but I don't want to see it done punitively against the Courts.
- F: Did the President ever talk to you about the rejection of Fortas?
- W: No.
- F: Of course Homer Thornberry just got lost in the whole thing.
- W: Homer just got lost in the whole thing, yes. No, no the President--
- F: Well the President did ask you then to stay on through the remainder of the Administration? Didn't he?
- W: President--
- F: President Johnson. To stay on after the factionalism rose over Fortas and then finally the withdrawal of Fortas' name as Chief Justice.
- W: No, no he did not.
- F: Or was that your decision?
- W: That was my decision. Because he had said in his letter to me that he would accept it when my successor was appointed and qualified. And there was no successor yet. So I was there.

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And nothing ever happened until a few days before Nixon took office. And then Nixon phoned me and said, "I think there ought to be a continuity in the Court, and if you leave it when I come in," he said, "it will destroy that continuity. Would you be willing to stay there until your successor is appointed?" And I said, "Certainly Mr. President, I will do that." But President Johnson never said anything to me about it after that.

F: Is the separation of powers solid enough that it doesn't make much difference to the Court who is President, what administration's in?

W: No, I don't think we can say that. I think it made some difference in the Court to have Nixon and Agnew out whipping up the people against the Supreme Court in order to get into office, and carrying on a vendetta against the courts from the time they do get into office up to the present time. I think that all hurts the Courts, because you see the Courts can't fight back. A man in politics can fight back. He can tell his story to the public and the public can weigh the--but the courts just can't fight back. It isn't in the nature of the position to do it.

F: Well now, you have given very rare interviews, and the Justices under your supervision have not. Has that been a sort of a tacit rule through the generations, or is that sort of a mark of the Warren procedure?

W: Well, I think with most of the Justices they are inclined to follow the rule that I lay down for myself. There is no rule about-- a Justice can say anything he wants to any time and I've never heard any discussion in the conference room against doing it, but I think there is a general understanding that the less we talk when we're on the Court there about current affairs, the better off the Court is.

F: Would you agree that the Warren Court belongs with John Marshall's Court as one of the two most important in our history?

W: Oh I wouldn't pass any such judgment as that. I think we were there in exciting times and--

F: There's no denying there are some significant decisions.

W: And the decisions were significant, but what their relative importance in a life of the nation is I think--

F: Well, you are all experienced men, but do you get a times a certain exhilaration on some of these key cases that you are maybe drawing some curtains--drawing open some curtains that have been closed for a long time? There's a feeling of a real thrill?

W: Oh yes, at times you do, particularly when the Court is unanimous on a subject, you know, you feel that progress is being made. Yes, I think so. This isn't the home of despondency, you know. It's a great responsibility, and normally you don't get great exhilaration out of decisions. But let's say instead of exhilaration, at times there is satisfaction to be derived from some of the important opinions that come down.

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F: Do you ever make decisions that you wish you didn't have to?

W: I've made a few that I would change, but there none of them that are considered in a most controversial area. Yes, I know a few cases that I think that if I was going to vote again I would vote differently. But they are not in the field of civil rights or individual rights or anything of that kind. But sure.

F: Was there ever any friction over who got the right of decision?

W: No, there's no way. That can hardly be a matter of friction because wherever the Chief Justice is in the majority it's his prerogative to assign the opinions. And it isn't a matter of consensus or anything else. And if the Chief Justice is not in the majority, he has nothing to say about it. The senior Justice who is with the majority assigns the opinion, and that is accepted and I have never heard of anything of that kind. And I was always quite careful to see that everybody got an opportunity to write important opinions. I didn't think that because a man was new that he shouldn't be given important decisions. We had no problem at all while I was there on the assignment of opinions.

F: You can't of course avoid your own previous conditioning, but when men come on the Court, do they pretty well shed their politics? You don't make a Republican decision or a Democratic decision?

W: Oh no. Not an ideological opinion and not a--

F: I'm not trying to put you in a perfect vacuum because we didn't grow up that way.

W: You can't be in a--

F: I am preconditioned to a certain extent.

W: Every man's judgment is colored by his experiences in life and the way he reacts to those experiences. You and I might have the same experiences and emotionally we might react entirely different. But every man is a creature of the conditions that he has faced in life and the interpretations he puts upon those things, it seems to me. And all those things go into the formation of opinions. I don't see how you can help it. I've heard some judges who say that they just put the law here and the Constitution here and if the law conforms to the Constitution as they read it there, it's good, and if it doesn't it's bad. That's a lot of malarkey. You know, it can't be that simple. It just can't be that simple in 999 out of 1,000 cases.

F: Can you think of anything else we ought to talk about, Mr. Chief Justice?

W: Well, no, I don't.

F: Have you seen President Johnson since he went out of office?

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W: Yes, I saw him once at the White House at a Sunday morning service of Nixon's. I think that's the only time I've seen him.

F: Did you get a chance to visit with him or just shake hands?

W: No, just going through the line, just went through the line and said hello to him. I haven't had an opportunity to visit with him.

F: Both of you seem to be taking retirement real well, and still working at it.

W: Well yes. I feel fine, and of course I've got a good many years on him!

F: Well, thank you very much.

W: You are entirely welcome.

Supreme Court of the United States
Washington, D.C. 20543

November 3, 1971

Chambers of
CHIEF JUSTICE WARREN
RETIRED

Dr. Joe B. Frantz, Director,
Oral History Project,
The University of Texas,
Austin, Texas 78712.

Dear Dr. Frantz:

I am returning the manuscript of our recent interview which may be used without change.

I put no reservation on its use other than to say that, without copying the actual material, I may discuss the same matters in writing something of my own.

Thank you for your generous remarks in your letters of September 27th and October 12th. It was a pleasure to meet with you, and I hope our trails will cross again in the not distant future.

With best wishes, I am

Sincerely,

Earl Warren

Accession Number 74-265

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Narrator: Earl Warren

Biographical information: retired Chief Justice U.S.

b. Los Angeles, California, March 19, 1891; B.A. U. Cal., 1912, J.D., 1914, LL.D: Admitted to California bar, 1914; practiced in San Francisco, Oakland, 1914-17; clk. assembly judiciary com. Calif. Legislature, 1919; dep. city atty., Oakland, 1919-20; dep dist. atty. Alameda County, 1920-23; chief dep. 1923-23; dist. atty, 1925-39; atty. gen. California, 1939-43; governor of California, 1943-53; chief justice U.S., 1953-69. Chancellor bd. regents Smithsonian Instn., 1953-69; chmn. bd. trustees Nat. Gallery Art, 1953-69. Chmn. Rep. Nat. Conv., 1944; Rep. candidate for v.p. U.S., 1948; died, July 9, 1974.

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General topic of interview: The role of the Supreme Court and the Warren Commission on the Assassination of John Kennedy.