

DISTRICT OF COLUMBIA CIRCUIT

ORAL HISTORY

SUSAN BLOCH: This is the first interview with Judge Oberdorfer. It is February 20, 1992. Judge, why don't we start with your childhood? Tell us what it was like to grow up in Birmingham, Alabama. Let's start with when you were born. I know your birthday is tomorrow.

LOUIS F. OBERDORFER: That's right. I was born on February 21, 1919. My early years, growing up in Alabama, are a remote memory now. I was an only child. My father was a very successful lawyer, and my mother was one of the first women in Birmingham to graduate from a major Eastern college.

S.B.: What college was that?

L.F.O.: My mother went to Vassar. My family was very literate. The conversation at the dinner table, as I was growing up, was about important things, current events. I don't know how far back you want to go into this.

I went to private school briefly when I started out and then went to public school, beginning in the fourth or fifth grade, at Lakeview Elementary School. I believe it is no longer a school. Then I was in one of the early classes of what was called

the Erskine Ramsey Technical High School. It wasn't really a technical high school. It was a general academic place that children from the south side of Birmingham attended.

S.B.: Was it for gifted children?

L.F.O.: Oh, no. No, no. It was a regular high school, with a football team. It was all white, of course, as all of the schools were segregated at that time, unfortunately. I am frank to say that I was more or less oblivious to the problem that that reflected.

My life was really, I think, quite the conventional life of a schoolboy. I walked to school and walked home, played football and baseball, just sandlot. I wasn't an athlete or an outstanding student. I did reasonably well in my classes, but I wasn't outstanding. I was president of my class in high school and had social friends in the neighborhood.

In the summers, beginning when I was about 11 years old, I went away to boys' camp, first in Connecticut and then in Maine. It was a very enriching experience for me. Two of my counselors at camp were undergraduates at Dartmouth. One of them was Orvil Dryfoos, who later was briefly the publisher of The New York Times until he died at an early age. It was my association with them that identified Dartmouth College to me.

There's a funny family story connected with the decision to send me to Dartmouth. My mother was a Prohibitionist. She had been raised in Decatur, Alabama, by her father's housekeeper, because her mother had died when she was about two years old. The housekeeper was a Methodist, and the Methodist Church was the leader of the Prohibition Movement in Alabama. Now, my mother didn't drink, and she did not permit alcohol in the house.

My father had gone to the University of Virginia. At some point, my mother learned -- and it couldn't have been too difficult to learn -- that at the University of Virginia people drank whiskey. So, although it had been intended from the time I was four or five years old that I would grow up and go to the University of Virginia through law school, as my father had done, and then come back to Birmingham to practice law as his partner, my mother decided that I shouldn't go to the University of Virginia. Since she didn't know anything about Dartmouth, I ended up there, following the example of Orvil Dryfoos and Dick Herman.

S.B.: Did your mother ever come to learn more about Dartmouth?

L.F.O.: Yes, she visited up there.

S.B.: She saw some beer?

L.F.O.: And she forgot all about the reason for my going there, but I never did.

While growing up in Birmingham, I remember going to the movies on Saturdays with my neighborhood friends on the trolley car; then, riding home with the windows open and the car hitting what seemed to us a high speed down Highland Avenue, which was sort of a boulevard with a green sward in the middle of it that carried the car tracks.

I remember going to baseball games with my father. I even remember the 1931 Dixie Series in which the Birmingham Barons played the Houston Buffaloes, I guess, or whatever their name was. The pitcher for Houston was a rookie by the name of Dizzy Dean, and Birmingham won the game 1-0 in the last half of the ninth inning. That hooked me on baseball for the rest of my life.

It's awfully hard in this compass to say anything meaningful about my childhood in Birmingham beyond what I've said.

S.B.: You were how old when the Depression really hit?

L.F.O.: Well, the Depression hit Birmingham in the late twenties.

S.B.: So you were still --

L.F.O.: I was quite aware of it. An interesting sidelight to my life there: My father had taught a couple of courses at the

night law school in Birmingham, and one of the courses he taught was bankruptcy. When the Depression hit, he was the local expert on bankruptcy, and I was able to go to an expensive college -- "expensive" in that the tuition was \$400 at that time -- because my father was appointed by the Federal Judge there to be the attorney for the Trustee in Bankruptcy whenever they had a substantial bankruptcy or reorganization during that period. So he really did quite well during the Depression in that practice.

But I remember the Depression very vividly. I remember the excitement that Franklin Roosevelt created in our household, and I even remember listening on the radio to Roosevelt's Inaugural Address about: "We have nothing to fear but fear, itself."

One of my father's former partners, a fellow by the name of George Huddleston, was then the Congressman from Birmingham. He was a very close friend of my father and used to come to the office frequently. He was also sort of a free-enterprise curmudgeon and became violently opposed to the New Deal. He ended his career in Congress -- it might have been in 1936 -- when he encountered his opponent, Luther Patrick, in a local restaurant and hit him over the head with a ketchup bottle in the presence of photographers.

S.B.: Were your parents Democrats?

L.F.O.: Yes, they were. My father was really considered quite liberal, and was. He also was a close friend of Justice Black. He never was in politics at all, other than cheering from the sidelines. I don't think he ever ran for office and never held public office by appointment, but he was quite interested in, and conversant with, things political and governmental.

During the thirties -- well, actually, it was later. In the forties and fifties, particularly after Brown v. Board of Education, he staked out a position in defending the Supreme Court, which was under bitter attack in the Birmingham papers and elsewhere. He wrote letters to the papers quite frequently, in effect, defending the Court and counter-attacking those who would undermine that institution, which, after all, depends ultimately on public understanding and particularly the support of lawyers.

My father was also President of the Birmingham Bar Association in 1928. That was a watershed moment. He was Jewish, obviously, and, therefore, this was considered by many at the time as marking the demise of the Ku Klux Klan as a force in the legal profession and the courts in Birmingham. He was a stand-up trial lawyer. He weathered the Klan period, somehow continuing to win cases in court; he maintained the respect of the judges and the

bar; and his election as President of the Birmingham Bar was considered an event at the time.

He was later, in 1934, President of the Alabama Bar. I don't remember that there was any particular significance to that outside of the bar, although he was at that time quite supportive, in terms of his private views -- and I suppose that he made them public -- of the Roosevelt Administration and the Democratic reforms.

S.B.: When you say that his election signaled the demise of the KKK, is that how it was played up in the media?

L.F.O.: Well, I don't remember reading that in the press. I was only nine years old at the time, but I remember hearing people say that to him. I hung around the office quite a lot. He was a single practitioner. He had a couple of associates at that time, but his partner, Peter Beddow, had died in the twenties, and he never took on another partner.

He was one of those lawyers who could draw a will; he could draw a contract; and he could try a case. He was a finished lawyer. He was also, early in his time, the author of a book that people used to talk to me about. I am going to show it to you.

S.B.: All right.

L.F.O.: He was born and raised in Charlottesville, Virginia. He went all the way through school there, including the University of Virginia, and moved to Birmingham when he was probably 25 years old.

S.B.: Do you know why he moved to Birmingham?

L.F.O.: Yes, his sister had settled there. When he visited there, he thought Birmingham was a frontier place that was going to grow. I think the population was then about 20,000. Birmingham had only been incorporated in 1870, and this was 1901. He boarded with his sister, took the Alabama Bar, and then set up shop. He used to say that he earned his first money coaching other applicants for the Bar Exam.

In any event, he used to tell the story that his father gave him \$50 when he left Charlottesville to settle in Birmingham. He boarded with his sister, who charged him \$25 per month. At the end of his first month there, he netted more than \$50 after paying for his board. So when his father sent him a second \$50, he returned it and was on his own from then on.

I forget all of the details, but he had a little office in the Lyon/Terry Building, as it was called. In addition to his coaching, he began to get small cases in the Justice of the Peace Court and realized that there was no guidance for a

practitioner starting out in the Justice of the Peace Court. So he sat down and put together this quite remarkable book called Oberdorfer's Alabama Justices' Practice.

It's a form book and a textbook for practice in the Justice of the Peace Court. It has chapters on -- I see one here on -- fence and stock laws. It starts out with references to constables, mechanic's liens, garnishments. He had the book published in 1905. The Michie Company published it for him. It's 495 pages, with a list of errata and a quite sensible index. He dedicated it to his father: "To my father, Bernard Oberdorfer, whose purity of heart, devotion to duty, strength and nobility of character will ever be my inspiration, this book is affectionately dedicated."

He says this about the book in the preface:

"No courts of the land affect the property and liberty of so large a part of the people as the Courts of Justices of the Peace, and no class of people can so ill afford to endure an improper and unjust administration of the law as the litigants in those courts. It, therefore, behooves the state to use its utmost endeavor to have these courts so organized and officered, and the law so published and rendered accessible, that there shall be the least possibility of an unjust or improper administration of the

law and, at the same time, the greatest occasion for universal respect for law."

Then he goes on and acknowledges the obligation to his friend, L. M. Washington of the Birmingham Bar, for the valuable labor and assistance contributed by him towards the preparation of this book. It's dated February 24, 1905.

S.B.: That's great.

L.F.O.: I've looked at that often, and I've quoted that often. You can compare it to Moore's Federal Practice, or any of those kinds of books, and it really is quite a fine piece of constructive, legal scholarship.

S.B.: Did it inspire you to want to be a judge at some point?

L.F.O.: Well, I wouldn't say that. My father's career, obviously, has been a guidepost for me, and we really became good friends as I grew older and became his peer, so to speak. He was a nice guy, and everybody liked him. Also, he was very bright, very able, and a powerful speaker.

I do have memories of sitting in court as a child -- or a young boy, anyway -- and watching him cross-examine a hostile witness. My father was a small fellow. He might have been five-feet-two-inches tall and probably never weighed more than 130 pounds. He had this fellow in the witness box, a great big burly,

red-neck sort of guy. I think he was an accountant, and this was some sort of fraud that was being charged. I never saw a man so decimated by words in my life. The fellow came off the stand as if he had been pulverized by a sledgehammer.

I can still hear my father's voice in public speech, and I can visualize his gestures. He had a way of shaking his finger that is still very vivid to me.

S.B.: You said that you always thought that you were going to go to law school?

L.F.O.: It was always assumed. Whenever I was asked: "What are you going to do when you grow up," I always answered: "I'm going to be a lawyer and go into my daddy's office." That was always assumed. Until after the War, that was my assumption.

S.B.: Did you ever doubt it -- I mean whether or not you would go to law school?

L.F.O.: No, I never had any other idea.

S.B.: When you applied to Dartmouth, did you apply to other places, as well?

L.F.O.: Yes. I applied to Harvard, or at least I think I did. I applied to Virginia, and I think I applied to Yale, but I don't recall whether I was admitted to any of those places.

S.B.: Why did you choose Dartmouth? Was it because of those

two guys?

L.F.O.: Well, primarily because of those two fellows.

S.B.: Were they in school at the time they were counselors?

L.F.O.: No, they had graduated. It was partly because I didn't want to go to a school that was located in a city. I remember thinking that. My mother was, of course, fighting me about going to the University of Virginia, and I didn't really have any special pull to the University of Virginia. I had visited in Charlottesville because we had family there. I'd been in Boston, and I'd been in New Haven. I didn't like cities, those kinds of cities. I hadn't visited Dartmouth before. The first time I laid eyes on it was when I went there.

S.B.: Really?

L.F.O.: It was a 30-hour train ride. Another pull to Dartmouth was a friend of my family who had also gone to camp with me and, as it turned out, was also a distant cousin, a second or third cousin, of the woman who now is my wife. Of course, I didn't know that at the time, but I was close to this guy, and we became roommates when we went to college. We made up a little coterie of four or five of us from the South who were all more or less related. We were Jewish, and it was arranged that Jewish students would room together. There was a certain segregation of Jewish

students at Dartmouth at that time, more than a little bit.

S.B.: The college did that?

L.F.O.: The college did that. As a matter of fact, I changed roommates. My assigned roommate was a fellow named Bobby Jacobson from New York City, who was a champion golfer. Somewhere down the line, he moved out, and Dick Weil moved in. We had been, and continued to be, very close friends.

S.B.: Was this the guy whom you knew from --

L.F.O.: From Montgomery.

S.B.: How did you know that the college segregated the Jewish students?

L.F.O.: Well, I just observed it when I got there.

S.B.: Were there any other signs of segregation or discrimination against Jews?

L.F.O.: Oh, yes, considerable political and social discrimination. I haven't thought about this in years, but I was quite aware of the political segregation; that is, Jewish students were not invited to join Paleopitis or Casque & Gauntlet, which were the secret societies, as distinguished from the academic honor groups. I do recall that my roommate, Dick Weil, was the business manager of the Daily Dartmouth, the college newspaper, and was a member of Green Key, which selected members based on achievement in

campus activities.

On the other hand, there was no academic discrimination, and within the dormitory there wasn't any problem. I had many non-Jewish friends, very close ones. There was a dean by the name of Neidlinger whom we always suspected to be the hatchet man, but it was not different from what I'd experienced every place else at that time, and it wasn't all that onerous. I mean I didn't like it, but I accepted the fact that it existed and tried to break out of it.

S.B.: Was it more than just sort of a shunning, or was it more than people just left you alone?

L.F.O.: Well, it really was based on the fraternities and those secret societies.

S.B.: Did they have Casque & Gauntlet then?

L.F.O.: Yes.

S.B.: And you couldn't get in?

L.F.O.: I didn't try. On the other hand, I was on the debating team and actually was the captain of it. I had won a prize, the Class of 1866 Oratorical Prize, in my junior year and probably was the best public speaker in the class, but I was not selected as the class orator, or whatever they called it. I just assumed that it was because I was Jewish. Maybe I was wrong.

S.B.: You mean the orator at commencement?

L.F.O.: At commencement, yes.

S.B.: Isn't that usually the Valedictorian?

L.F.O.: No, not the Valedictorian. There was another person, at least at that time, who was supposed to be the most accomplished public speaker. No, the Valedictorian was, I am sure, selected on academic grounds quite correctly. I don't remember who it was.

S.B.: Did you join a fraternity?

L.F.O.: Yes, I joined a Jewish fraternity, Pi Lambda Phi.

S.B.: What did you major in?

L.F.O.: Oh, I had a particular favorite course and teacher that I would like to describe, since we are making a long-term record. I think I've done this in some other oral history in which I've participated. There was a course in sociology -- but it could have been anything, Western cultural history or philosophy or whatever -- taught by Professor John Moffat Mecklin. Have you ever heard of him?

S.B.: No, I don't think so.

L.F.O.: He was tall and handsome, with snow-white hair. Professor Mecklin was, I think, the son of a Presbyterian minister in Mississippi. He had gone to several seminaries and ended up at Princeton, which had a religious school at the time. Maybe it

still does. Then he had a fellowship to study in Germany. Returning to Princeton, Mecklin became something of a rebel and was thrown out during an academic crisis, so he went on the faculty at Amherst under the leadership of Alexander Michaeljon. Mecklin, Michaeljon, and some others raised enough of a ruckus there that they were thrown out of Amherst, and he ended up at Dartmouth teaching this course in sociology.

Mecklin had the platform manner of a revival preacher. We'll get to the substance later, but his manner was so moving. He had this way of raising his booming voice to a great pitch, and then, to hold the attention of the class and emphasize what he was saying, he would hold up his hand and move his fingers like a piano player. As he came down from holding his hand high, he would lower his voice to a whisper.

The course was -- I guess the key to it was a book that I still remember. I don't have a copy of it, unfortunately. The author was Vaihinger, and the title was The Philosophy of "As If." Mecklin's thesis went back to anthropology. We had Malinowski and all of those things. He talked about them, and we read things about ancient religions: how primitive people would resolve their doubts about the universe by worshipping the sun or worshipping idols, with no factual basis for their commitment to that

particular thought, but satisfying the need -- he used the term "primordial need" -- to have some kind of structured answer for the unanswerable.

Mecklin took that thesis right through the cultural history of all of the religions and the political philosophies. At that time -- and this was in the 1930s -- we had, for example, the Communists and the Nazis. His thesis played right into that: how the German and Russian people accepted various bromides that had no factual basis, thus satisfying this primordial need for certainty.

I remember that one of the books we had in class was by Thurman Arnold, The Folklore of Capitalism, which I guess my generation knew.

Mecklin was very interested in the South, and he and I were sort of refugees in a strange land. I remember I wrote a paper for him on the Georgia Senator, Tom Watson, who was a populist and an anti-Semite and probably a Ku Klux Klansman. I don't remember the paper now, but it was obviously in aid of this thesis of his. I really was more stimulated by Mecklin than all of the other things that I did in college. That year that we spent with him in this lecture and writing course was certainly the most influential.

S.B.: What year did you have that?

L.F.O.: 1938.

S.B.: Was it your junior year?

L.F.O.: My junior year.

S.B.: Did you have him only for one course?

L.F.O.: One year, two semesters; but then in my senior year we remained in contact. I kept in touch with him.

S.B.: Were you glad you went to Dartmouth?

L.F.O.: Yes, I think it was a very good way for me to find a window on the world. I was only 16 years old when I entered college. I had some growing up to do.

S.B.: You had skipped grades?

L.F.O.: I must have, somewhere along the line. I was always the youngest person in my class everywhere I went.

S.B.: It sounds like you may have actually skipped two.

L.F.O.: I might have.

S.B.: You don't remember skipping?

L.F.O.: I don't remember what class it was, or classes. You were double-promoted on occasion. That was stylish in those days.

S.B.: So you must have done well.

L.F.O.: Oh, I did well, but I wasn't first in my class in high school, and I wasn't first in my class in college. I did all right, but I didn't do all that well.

S.B.: Did you get on the Dean's List, or that sort of thing?

L.F.O.: In Dartmouth, yes, but I also got a great deal out of debating. I did that during all four years, and we used to take trips. I remember going to New Haven with the debating team. My recollection is that one of my opponents down there in some debate was Bill Bundy. I remember going from Hanover in the kind of rough clothes that we wore there to this debate in New Haven in the Political Union, a finely panelled, mini-reconstruction of the House of Commons, where we met these smooth, Groton-trained Yale debaters.

I forget who my colleague was. It might have been another roughneck by the name of Stanley Brown, who was a good friend of mine. We really were ducks out of water down there. I'm sure we did all right, but I really did feel the culture shock.

S.B.: Was that the first time you had seen Yale?

L.F.O.: I went by there when I was looking at colleges, I believe. I remember something about being there; but that was the first time I spent any time there, the first time I met anybody there, and the first time I was capable of appreciating it.

S.B.: So it confirmed for you that you had made the right choice in going to Dartmouth?

L.F.O.: Yes. Otherwise, I think I would have drowned, at 16

years old, coming from my background in Birmingham to that kind of person at Yale College. As a matter of fact, that kind of culture shock continued.

I remember my very first moment at Yale Law School. I had driven up with a friend from Birmingham who was an English major, or maybe he was getting his doctorate in English. He later was a tenured professor at Yale in the English Department. He let me out in front of the law school, and, of course, the dormitory was there, too. I went into the lobby there and put my bags down. I was dirty and hot. It was early in the fall, and I went into the Registrar's Office.

The Registrar was Arlene Hadley. Her desk was behind a counter in the Registrar's Office there, and she was talking to a young man in his J. Press jacket and nicely polished loafers, who was sitting on her desk with his legs crossed, swinging one leg -- a very tall, handsome guy. It was J. Richardson Dilworth, who later turned out to be a classmate of mine, a very fine guy. But I thought to myself: What in the hell is a guy like me doing in a place like this? I remember that going through my mind.

S.B.: But you stayed?

L.F.O.: Oh, yes. I loved Yale Law School, and I felt none of

the kinds of social limitations that I noticed at Dartmouth, except that I wasn't invited to join Corby Court, which was sort of a social thing, until I became Editor of the Law Journal. Then I didn't do it.

S.B.: But then you were invited?

L.F.O.: Then I was invited. But that's all behind them at Yale now. There is none of that now, but it existed then -- a little bit.

S.B.: Did you say, though, that you were more at home at Yale Law School than at Dartmouth?

L.F.O.: Oh, yes.

S.B.: Why?

L.F.O.: Oh, I think there were probably several reasons. I got off to a very fast start at Yale and established myself there in a way that I hadn't at all at Dartmouth. When I entered Dartmouth, I was 16 years old. I'd never been in a really first-class academic environment. It was something of a struggle for me at Dartmouth. I worked hard, but I also had a good time. I learned to ski, and we went down to Smith and took time off.

When I got to law school, I really clamped down that first semester and ended up as one of the top people in the class. I had done well in classrooms, too, so that I was "somebody" at

Yale Law School almost from the starting gate. At Dartmouth I was way back in the pack for a long time. I had a wonderful experience at Yale Law School.

S.B.: Before we leave Dartmouth, let me ask you this: You talked about the debating team, and you just mentioned skiing. Were there any other extracurricular things that you did?

L.F.O.: I did a lot of hiking, walking.

S.B.: Was that with an outing club?

L.F.O.: I didn't really participate in a club. There was a road along the Connecticut River. I used to walk down across the Ledyard Bridge and around in Vermont a good deal. I would walk up on a hill on the New Hampshire side, Balch Hill.

S.B.: Is that where they had the ski area?

L.F.O.: No, the skiing was at the golf course. Also, I was a golfer at that time. I played golf until the weather closed us down. As I say, I worked hard, but I also spent a lot of time at Smith and had dates up for Green Key and Carnival and all of those things.

S.B.: House parties?

L.F.O.: Those were house parties, yes.

S.B.: Weren't there fall house parties?

L.F.O.: Yes, I guess there were fall house parties. The

first year, of course, I wasn't in a fraternity, but we had a little group there in the dormitory, Fayerweather Hall, and we had a social life around that.

S.B.: How did you get down to Smith, by what method?

L.F.O.: I always had a friend who would drive me. I mean another fellow who owned a car and would be going. Occasionally, I went by train.

S.B.: Did the kids have cars then?

L.F.O.: Yes.

S.B.: When were you at Dartmouth? What were your Dartmouth years?

L.F.O.: I was the Class of '39.

S.B.: So it was 1935 to 1939, then.

L.F.O.: Yes. Well, now, I don't remember whether I went down to Smith in my freshman year, but I remember in my freshman year going with my first roommate, Bobby Jacobson, and some others to the Dartmouth-Princeton game. That was not an academic enterprise. I know I went down to the Harvard game, and I went to the Yale game my first year. I wasn't a grind.

With respect to the Dartmouth-Princeton game, I remember that we decided during the evening on Friday night to go to Princeton for the game on Saturday. I don't know where we got

the money, but we must have been able to cash a check somewhere. I can't imagine where, but we did. Then we got on the Montrealer going one way and the Washingtonian going the other. The Montrealer, which traveled from Montreal to Washington, came through White River Junction sometime after midnight.

We got down to White River Junction. I can't remember now how we got there. We might have taken a taxi, or maybe it was a bus. I was dressed in a sheepskin coat from De Pinna -- I still have it -- and boots and whatnot. I headed for the Princeton game with nothing but a toothbrush and toothpaste in my pocket. That's all the baggage I had.

Bobby Jacobson's father lived in some fancy apartment in New York City. It might have been on Park Avenue. It probably was Park Avenue. We arrived at Penn Station, I think, and went from Penn Station up to this apartment. Unfortunately, the doorman didn't recognize Bobby, although he'd been living there with his folks, and they wouldn't let us in because we were so shabbily dressed.

Nevertheless, we went on down to Princeton and saw that famous game that was played in the snow, and Dartmouth had a touchdown called back because they had 12 men on the field when they made the touchdown. The snow was not predicted, so we were

the only people in the stands, or at least around us, who had on proper clothes for this day.

I also had a social life at Yale, but I really clicked there. I enjoyed my years at the law school, and, obviously, I did well. The faculty was wonderful.

S.B.: How did you decide to go to Yale Law School?

L.F.O.: I thought Yale and Harvard were the best. I was admitted to both, but, again, Harvard was too big. Also, I guess I was a little appalled by this talk of: "Look to your left, and look to your right, and one of you won't be here."

S.B.: You'd heard about that?

L.F.O.: Oh, yes; everybody knew about that.

S.B.: Was Yale ungraded even then?

L.F.O.: Oh, no, we had grades. A millimeter difference between grades was critical. The Law Journal had a "First Competition" based on first-semester grades, and they selected the top ten in the class for that competition. Not everybody participated, but most of us did. The grades were handed out in the Registrar's Office.

The grades showed your rank, and I guess one of the highest moments in my life was opening that envelope and discovering that I had "made the 'First Competition.'" That was

the ticket to my career.

S.B.: So you were in the top ten?

L.F.O.: In the first semester, yes; and I'm sure my whole career changed. I suspect that, but for making the Law Journal and then being Editor-in-Chief, I wouldn't have dreamed of going into the kind of law competition that I did to be a law clerk. I wouldn't have been eligible, probably, for a clerkship, and I'd have gone back to Birmingham. If that had happened, I like to think that I would have been a good Birmingham lawyer and probably ended up in the Federal District Court there.

S.B.: What was your favorite course, or courses?

L.F.O.: Well, there were several. I think my favorite course, in the sense of the one that I got the most out of, was the torts course taught by Professor Harry Shulman.

S.B.: So that was the first year?

L.F.O.: The first year, yes; and there was a property course taught by, of all people, Myres McDougal. Did you go to Yale?

S.B.: No, I went to Michigan.

L.F.O.: Oh, did you?

S.B.: But I know the name.

L.F.O.: Myres McDougal went on from there to get into international law and space law. He was the epitome of the far-out

Yale professor. He'd been a Rhodes Scholar; he had done graduate work at Yale. He was also from the South, from Mississippi, and he was a good friend. We became quite chummy after that course.

I also took a course from him in what was called Future Interests, which was an estates course. Again, I'm sure that he was very good at it, but he had his eye on something more relevant to him. He remained a character up there, though.

S.B.: How many students were in a class?

L.F.O.: 120.

S.B.: How many were in your Dartmouth class?

L.F.O.: Probably 450.

S.B.: What was your least favorite class and/or teacher?

L.F.O.: My least favorite at Yale? Well --

S.B.: You liked them all?

L.F.O.: Maybe a course in -- what did I not like?

S.B.: Maybe you liked them all.

L.F.O.: Well, in my senior year there -- I'll tell you, I don't even remember what they were, because I was drafted in the fall of my third year.

S.B.: What calendar year was that?

L.F.O.: 1941. Talk about heights and depths: In March of 1941, I was elected Editor-in-Chief of the Law Journal, which was

another career peak. Then, in the summer of 1941, I was married. In the meantime, the lottery had given me a relatively low number, and I was slated for the draft.

In an effort to finish school before I was drafted, I went to summer school that year. The summer session was very attenuated and very informal because they had never done a summer school before and were doing it for those of us who were threatened with the draft. I didn't pay a hell of a lot of attention to that. I never knew what my grades were for that semester. I don't know whether they even graded me. I did take the exams; but, whatever courses I took that summer, they are forgotten.

S.B.: Because you were preoccupied with the war?

L.F.O.: Well, I knew I was getting married, and the war was there, and I had the Journal to do. I was very scarce in attendance at those classes in the summertime. I can't tell you right now what courses I took that summer.

S.B.: But that wasn't enough to finish; right?

L.F.O.: I asked for a deferment until the end of the last semester. The draft board refused it, and I went into the Army in October of 1941.

S.B.: Oh, you did?

L.F.O.: Yes.

S.B.: When did you finish law school?

L.F.O.: In 1946.

S.B.: So you never really got to be Editor-in-Chief, then?

L.F.O.: Oh, I was, from March --

S.B.: From March until October?

L.F.O.: We started right then, and I put out two issues, if I recall.

S.B.: Did you write a note?

L.F.O.: Oh, I wrote numerous notes.

S.B.: Numerous?

L.F.O.: The difference between the Yale Law Journal then and now is cosmic.

S.B.: In what way?

L.F.O.: As I understand it, now the students do one note. If they work at it, they do one note, maybe. In order to be eligible for election to the board, we had to do four units.

S.B.: What is a unit?

L.F.O.: A note was one unit, and a comment was two units. That really was another formative experience. In the spring semester of my first year, by virtue of my grades, I became eligible for what was called the "First Competition." The case I was given to write a note about had something to do with the

responsibility of consignors in a freight transaction --
reconsignment.

Now, one of my former roommates was down here in
Washington, and I discovered that there was --

S.B.: A former Dartmouth roommate?

L.F.O.: A former Dartmouth roommate was down here working
for some agency or other on the Hill. I discovered that the case
had been the subject of legislative interest, so I got hold of him,
and he got me the committee reports.

Again, talk about luck: As I recall, while I was
working on the note, Congress passed the bill, so the note deals
with the case and the legislation.

The Law Journal published student notes without the
name of the author in an order that was sort of a grading process.
The lead note was No. 1, and each time the Journal came out, they
posted the index of the issue that was published that day outside
the Dean's Office. That index showed the names of the authors, and
my note was No. 1, partly because of the luck of stumbling onto
this information. Nowadays, with computers and whatnot, that would
have been no stunt, but that was just luck.

Then in the second semester the Yale Law Journal did
a note jointly with the Harvard Law Review and the Columbia Law

Review entitled "Mobilization for Defense." This was in the fall of 1940, and I was selected to do the Yale portion. The Harvard part was done by a fellow named Al Rosenthal, who has since been on the faculty at Columbia.

S.B.: And Dean, wasn't he?

L.F.O.: And Dean, I guess he was. The Columbia note was done by a fellow named Morrison, who later was in the Solicitor General's Office; and my supervisor, that is, the comment editor who supervised my note, was Potter Stewart. I have that here. Well, as a matter of fact, it was published in all three Law Reviews, and it was really quite an event.

Then I did two other notes that year. One was on the immunity of bonds of political subdivisions of foreign states. That was a case involving bonds of the Sao Paulo Province in Brazil. I did another note on the admissibility of prior criminal convictions in subsequent civil actions, and all of those were published between the spring of 1940 and January of 1941.

S.B.: That's impressive. You're right. It's a cosmic difference.

L.F.O.: It wasn't only me. Everybody who competed successfully did that.

S.B.: That's impressive. They don't do that today.

L.F.O.: No, no. I've got those here. Do you want to see them?

S.B.: Sure.

L.F.O.: There's one. You can tell it is first because -- well, both of them were, and this is the "Mobilization for Defense."

S.B.: Had they done that before with the three Law Reviews?

L.F.O.: I don't think so.

S.B.: Have they done it since?

L.F.O.: I don't know. See the footnote?

S.B.: Right. How did you coordinate, mainly by phone?

L.F.O.: Well, no. I did a section. This is my section. Let me see. Is this all of it? There was one section on the excess profits tax. It was done by, I guess, the Columbia fellow, and then there was another section. I don't know what it was.

S.B.: There is one on conscription.

L.F.O.: Mine was on industrial mobilization. Here it is. I think you've got the Harvard one. This was my section here.

S.B.: I see.

L.F.O.: I came down here to Washington, and I interviewed David Ginsberg, Abe Fortas, Oscar Cox, and several other people who gave me a lot of material. It's really quite a -- look at some of

those footnotes. I haven't looked at this for a long time.

S.B.: This is mammoth. This is big.

L.F.O.: Oh, I worked like hell on that.

S.B.: I think what I'll do is just get the cites so that it can go in there with the right title and stuff, but I don't have to do that now.

L.F.O.: No.

S.B.: Should I read the cites onto the tape?

L.F.O.: Pardon?

S.B.: Should we read the titles and the cites onto the tape?

L.F.O.: All right. That's one way to do it.

S.B.: Why don't you do it in the order that you wrote them?

L.F.O.: All right. Note, Liability of Reconsignors for Freight Charges, 49 Yale L.J. 1457 (1940); Mobilization for Defense: II. Industrial Mobilization, 50 Yale L.J. 250 (1940) (published by the Columbia Law Review, Harvard Law Review, and Yale Law Journal); Note, Effect of a Criminal Conviction in Subsequent Civil Suits, 50 Yale L.J. 499; and Note, Immunity from Suit of Foreign Sovereign Instrumentalities and Obligations, 50 Yale L.J. 1088.

S.B.: And both of those are probably 1940?

L.F.O.: Yes. Now, wait a minute. I'm just curious. They

bear the date of 1941, but that must be -- that's when they --

S.B.: That's probably when they came out.

L.F.O.: They might have been published in --

S.B.: Maybe January.

L.F.O.: It might have been January or February.

S.B.: Well, I'm sure that anyone who wants to find them can find them now, with that information.

L.F.O.: Nobody is going to want to find them. That's ancient history.

S.B.: If you could improve Yale in some way, that is, if you could have improved your experience there, what would you do?

L.F.O.: Well, to start out with, there were four women in the class and no blacks.

S.B.: At Dartmouth, I assume there were no blacks, either. Is that right?

L.F.O.: Yes, there were. As a matter of fact, now that you mention it, the Valedictorian of our class was a black by the name of Charles Davis who became a distinguished poet and a professor at Hampton Institute and then at Yale, or vice-versa.

S.B.: Where had he grown up?

L.F.O.: In Newport News or Norfolk, Virginia. He was a very, very erudite scholar. Then there were two or three other

blacks in the class and two or three Indians.

S.B.: Dartmouth, I guess, always tried to get some Native Americans. How many women did you say were at Yale?

L.F.O.: Four.

S.B.: Were you conscious of --

L.F.O.: Pardon?

S.B.: Were you conscious of the fact that there were very few women and very few blacks?

L.F.O.: Very. I mean I was conscious of it. It seemed perfectly normal to me. Let me put it the other way: It was a surprise to me to see four women in the class. There were none at Dartmouth. Of course, the thing to which I had to make some adjustment was the idea of women at Dartmouth. When that happened, I just couldn't project that, and I don't think the women would have survived it, either, in my time.

S.B.: Why?

L.F.O.: I mean the men were so juvenile and sophomoric and hyper. Maybe Carnival and Green Key were more civilized when you went up there, but they were not during my time.

S.B.: No, I think there were remnants of the uncivilized still there when I was up there.

L.F.O.: A lot of very drunk guys. I mean blotto.

S.B.: But I think one of the arguments people made for letting women into Dartmouth was that it might make it a little more civilized. I don't know if that has happened.

L.F.O.: Oh, I think there was a tough transition. I have a couple of friends, really daughters or grandchildren of friends, who were there in the 1950s. One, in particular, was seriously traumatized by the experience, the harassment.

S.B.: She was there, you mean, dating someone?

L.F.O.: No, not that I know. No, this was a student, one of the early women undergraduates at Dartmouth.

S.B.: But they didn't let them in until --

L.F.O.: Well, whenever that was. Did I say the 1950s? Whenever they --

S.B.: I think it was the 1970s.

L.F.O.: Well, the 1970s, then.

S.B.: Oh, I see. Okay.

L.F.O.: Whenever it was.

S.B.: And she was traumatized?

L.F.O.: Yes.

S.B.: Yes, I think it's a better environment now. So if you could change Yale in some way, what would you do?

L.F.O.: As of then?

S.B.: Yes.

L.F.O.: I wouldn't have changed Yale then. I would have let more women in, and I would have -- I mean, from what I know now, I would have let more women in. I felt then, and think now, that the Yale Law School of my time was about as good as you could get with a law school.

I consciously elected "bread-and-butter courses." They were serious and well taught: Evidence, Estates, Future Interests, Procedure, Taxation. I assumed I was going back to Birmingham to be a general practitioner there. I think it was more technically oriented, with less sociology than there is now, and I'm not sure that the change has been for the better.

I had the most unusual letter the other day in connection with a law-clerk application from Yale. Initially, the applicant had been turned down at Yale, so he went to Cornell his first year as a second choice and, incidentally, had been first in his class there. Then he transferred to Yale and had been there for only a few months at the time he applied.

The professor who wrote said, in substance: Now, we don't know this fellow very well, but we do know that he was first in his class at Cornell, and he's done very well in my class, although I haven't graded his exam yet. This was in January.

But, you know, he says in the letter, it's probably a pretty good thing for a student to go somewhere else for the first year before coming to Yale.

S.B.: To learn the basics?

L.F.O.: To learn some law. Incidentally, I have had remarkable success with my Michigan clerks, and I just hired one who, I'm told, is probably going to be the Editor-in-Chief of your Law Review next year.

S.B. Who is that?

L.F.O.: Greg Magarian. And Kent Syverud is a former clerk of mine.

S.B.: Is he one of yours?

L.F.O.: Oh, yes.

S.B.: When I was at Wilmer, I went out with John Pickering to interview at Michigan in those years that I was at Wilmer. John and I found Kent.

L.F.O.: Oh, did you, really? Before he came here?

S.B.: Yes. Well, he was a second-year student, and we were wooing him for the summer thing.

L.F.O.: I just spoke to him this morning. I invited him to the Judicial Conference, but he can't come.

S.B.: And didn't he leave law school a bit to go do something

in the South, or something, or he had come from the South, or something?

L.F.O.: No, no. He comes from South Dakota.

S.B.: Is he now teaching?

L.F.O.: He's just been given tenure.

S.B.: Where?

L.F.O.: At Michigan.

S.B.: Oh, he went back to Michigan to teach; right.

L.F.O.: Just in the last few days, his wife called me up on a Monday morning to tell me about it.

S.B.: I'm sorry he can't come to the Judicial Conference, because I'll be there.

L.F.O.: I know.

S.B.: I would like to see him. Well, I'm glad that you've had good experience with Michigan.

L.F.O.: Also, Bill Holmes, who was an Editor-in-Chief of your Law Review, was my clerk. Leslie Gielow came here from Michigan with an 800 LSAT and went on to clerk for Powell. She was Powell's clerk during Powell's last year as an active judge.

S.B.: I'm on the committee of visitors out there, so I go almost every year.

L.F.O.: Go speak to Kent.

S.B.: Okay. I forgot he was out there. Actually, I did know that. Well, I have to ask you --

L.F.O.: Is it time?

S.B.: Do you want to take a break?

L.F.O.: Well, I'm --

S.B.: You have to stop?

L.F.O.: I wonder -- I've got a 1:45 p.m. hearing.

S.B.: Okay.

L.F.O.: And I wonder whether we might not break, and if you want to resume later this afternoon, I can.

S.B.: Okay, or at another time. The only thing I was going to ask you now -- and it might be a good time to stop -- is how you met your wife. Because you have told us that you got married, but we do not have her in the picture yet.

L.F.O.: Well, I met her first when we were about 18 months old. Her mother and my mother were very good friends in Birmingham before either married, and her grandmother lived about two blocks from my parents in Birmingham. From her very tiny infancy, she used to visit up there to see her grandmother, but we never had anything to do with each other. We would see each other; our families went on picnics together and things like that; and then she ended up at Smith.

S.B.: And you were at Dartmouth then?

L.F.O.: She was Class of '39 at Smith.

S.B.: The same class as yours.

L.F.O.: I guess in my sophomore year I went down there and had a date with her, and we went from there.

S.B.: So you also spent most of your Smith-Dartmouth years dating your wife?

L.F.O.: Yes. And we've been married for nearly 51 years, so if I take it back beyond that, then I guess I don't know life without her.

S.B.: That's great. What did she major in at Smith?

L.F.O.: Music. And she's now a veterinary technician.

S.B.: Working with animals, you mean?

L.F.O.: Yes.

S.B.: I saw the picture of you, your wife, and your dog in the article.

L.F.O.: That's a nice piece.

S.B.: It is nice. Thank you for sending it. Okay. Why don't I let you have lunch, or whatever you have to do.

L.F.O.: I'd invite you to lunch, but I need to visit with my colleagues about something. Do you want to come back?

S.B.: Sure.

(Brief recess.)

S.B.: Are you ready to continue?

L.F.O.: Yes.

S.B.: Okay. Now, I wonder if you would tell us what it was like to go from Yale Law School into the Army as a draftee private?

L.F.O.: That was a cultural shock. I remember leaving New Haven and driving down to Alabama during the World Series of 1941. I remember listening on the radio when Mickey Owen dropped the third strike. We went back to Birmingham in October.

I was inducted on October 16th.

I had been examined by the draft-board doctor sometime during the summer and classified 1/A. At my wedding, which was in New York at the Pierre Hotel -- "high cotton," as we say -- I left the wedding dinner with my father-in-law to send a telegram to my draft board advising them that I was now married, but that I did not wish to have an exemption on account of it.

S.B.: Were they giving them in those days?

L.F.O.: I don't know. I think they were. I think that might have been an excess of patriotism, but I did do that. I remember I went to the draft-board office on the 16th, which was on Highland Avenue, less than one block from where I had gone to Sunday School

and two blocks from my high school, and I got on a bus and went to the induction center at Anniston, Alabama -- Fort McClellan.

I don't remember anything transpiring there, but I remember going from there to Fort McPherson, Georgia, in Atlanta. I was sworn into the United States Army by Second Lieutenant Morris Abram, whom I had known about but had never met. I remember he wore puttees.

S.B.: What is that?

L.F.O.: Those are leather things -- they are leather boots that strap on above your shoe, and they are very highly polished.

S.B.: Is that part of the military uniform?

L.F.O.: Yes. And I joined a group of people, the likes of whom I had seen somewhat from a distance in high school, from the hills of East Tennessee, Northwest Georgia, and Northeast Alabama. There, I remember I took an intelligence test. I forget what they call it now, and I was classified and shipped by train to Fort Eustis, Virginia. Fort Eustis, Virginia, was a coast artillery training camp.

I wish I could remember the name of the sergeant who was in charge of us, but he was an old and tough, regular Army fellow. He looked a little bit like a small Clark Gable. He had a little thin, black moustache and very dark hair. He was

Louisiana/Cajun. I was in the barracks with this group, and I made good friends and learned a lot. By the way, this group was all white.

Just to show you the culture shock of going from being Editor-in-Chief of the Yale Law Review to a trainee private in a coast artillery training battalion, I'll tell you about something that happened on November 11, 1941. That was the first day off we were to have; it was a holiday, Armistice Day. My wife had arranged to have her father drive her to Williamsburg, which was the nearest town about 12 miles away, or 20 miles away. I don't remember exactly, but it was something like that.

I was to have the day off -- the night off, and we had a car as a wedding present. Her father was going to leave her and the car. They got up there the night before, and they found a room in the home of a Dr. Blocker, who was a minister in Williamsburg. However, while they were en route on November 10th, the duty roster was posted, and this former Editor-in-Chief of the Yale Law Journal was detailed on that holiday as latrine orderly. My father-in-law never forgot it for all of the 40-some-odd years that he and I were related after that.

So they came out. I think I went off duty at about 4:00 o'clock, and they came out to the post, and we had some kind

of supper in the Post Exchange. The unit was basically divided into the Gun Section and the Plotting Room Section. I don't want to go into the details, but the Gun Section people were the "grunts" who did the heavy lifting. The fellows in the Plotting Room Section were supposedly the "intellectuals" of the battery. They had a big plotting board, and they were to plot the course of the target as it was identified by observers. The plotting predicts where the target will be in the interim, and the guns are traversed to fire at the point where the plotting predicts the target ship will be.

I remember being terribly chagrined because, with all of my "intellectual" capabilities, the battery commander had not assigned me to the Plotting Room Section, but to the Gun Section. I really had some ache about that.

S.B.: Did you ever figure out why?

L.F.O.: No, nor did I ask. It was a very maturing experience. Meanwhile, my wife had a room at Dr. Blocker's house in Williamsburg. Then, on Thanksgiving Day of 1941, I did get a day off, and my wife and I went to the Williamsburg Inn for Thanksgiving dinner. We had a magnificent dinner: candles and a beautiful table setting in a darkened room. It was a marvelous dinner.

The following Sunday -- or the Sunday after the following Sunday was December 7th. Elizabeth had a cousin who was stationed at Fort Lee, Virginia, and we met him for lunch on December 7th at the John Marshall Hotel in Richmond. While we were having lunch, an hysterical lady came into the dining room, telling the whole place that the Japanese had attacked Pearl Harbor. I remember driving back to the fort that night, realizing what was ahead. Within a week, our casual unit was alerted for shipment.

S.B.: Did you say "casual"?

L.F.O.: Yes. It means that we weren't organized into any platoon or company, but were simply a bunch of individual, unassigned soldiers. Just before Christmas we were shipped out. This was around December 20, 1941. Security was so bad that my wife knew where we were going. Her family came down to the train as it went through Montgomery on its way to New Orleans, and she was in New Orleans when we went through there.

We had understood that we were on our way to the Dutch East Indies, and we may well have been. I never saw orders; that was the rumor. In any event, we went on a transport from New Orleans before Christmas. I spent Christmas Day in 1941, I remember, in the Caribbean sitting cross-legged on the deck of a transport armed with a .75-millimeter field gun strapped on the

deck in the bow. That was the only thing on it. There were submarines down there. A zig-zag course and that gun were our protection.

On a troop transport you share your hammock or canvas berth. You have it for half the night, and then you get up, and somebody else has it for half the night. I remember sitting on that deck, cross-legged, eating my lunch or dinner out of a mess kit and thinking: God, this is a far cry from New Haven. And I ended up in Panama.

S.B.: You didn't know at the time where you were going?

L.F.O.: No, we didn't know, and when we got there, we didn't know if we were going to stay there. But we were unloaded there and detailed to Battery D of the Fourth Coast Artillery, which was a very ancient outfit. The Fourth Coast Artillery had been the Fourth Artillery -- I don't know -- way before the Civil War, and it had been the coast artillery regiment in Panama since we had owned Panama.

This battery was maintaining a mine field on the Pacific entrance to the Panama Canal. I was detailed to that and ended up as the battery clerk -- actually, the assistant battery clerk, and I lived in a very traditional, permanent Army barracks facing the parade ground at Fort Amador. The only discomfort was

that we had bedbugs, and I remember using a blowtorch on the springs of the bed to try to rid it of the bedbugs -- unsuccessfully, I might add.

S.B.: So you were not in any danger?

L.F.O.: Oh, no.

S.B.: And you knew that?

L.F.O.: Oh, I assumed that I was in danger of going on further. We had alerts and all of that, but I don't recall any information or any alert that was -- I mean there may have been a submarine or something like that, but there was no indication that there was going to be a landing or an attack. It was like the peacetime Army, and we'd go into Panama City for the weekend on a weekend pass.

Again, I was with a group of very plain, nice guys. I remember one fellow's name was Earp, with whom I would play billiards, and he claimed to be related to Wyatt Earp. I never knew whether that was true or not, but he was from Missouri. Then there were several people that I was with who were old Army. I mean they had been there before, and the colonel in charge was traditional old Army. His name was Colonel Montford, and he was about as remote to me, even though he was in the next room, as the President.

I was the assistant battery clerk, and he was in the regimental headquarters. He was all shined up, and he strutted and carried a crop and all that kind of stuff. I don't know whatever happened to him, but his name -- I've seen a family name like that in Civil War literature.

Then I applied for Officers' Candidate School. I was accepted and came back to the United States, again by insecure transport. I was able to phone home from Panama City. I shouldn't have, but I did. It wasn't against the law. I just went down to downtown Panama and phoned my wife and told her I was coming home. I didn't tell her when, but she was in New Orleans when the boat landed.

S.B.: When was this?

L.F.O.: This was in the spring of 1941.

S.B.: 1942?

L.F.O.: 1942, and I was detailed to Officers' Candidate School at Camp Davis, North Carolina, which was a very rigid, tough workout. I remember the battery commander there was Captain Aber. He was a West Pointer, and he gave me a good deal of what I think you get in a really professional military school that I never would have learned afterward.

S.B.: What sort of thing?

L.F.O.: Well, if you had a piece of lint in your rifle barrel at inspection, that would cost you the weekend, or if your belt buckle or shoes weren't immaculately shined 24 hours a day, you would get some kind of gig. We were given practice in the use of voice commands. It was an experience that I certainly never would have gotten in ordinary civilian life, and I've often said that it probably was more important in many ways to my handling of this job over the last years than my legal experience or my legal education -- not just what I have mentioned, but the subsequent sort of really quite benign military experience that I had.

S.B.: Why is that?

L.F.O.: In terms of attention to detail, management of myself in difficult situations, and the rapport I think I have particularly with criminal defendants, in being able to talk to them in a firm, commanding, but friendly, way. It was a very important, maturing experience.

I mentioned to you this morning that letter about the guy who was a better lawyer because he had done a year in another law school before he went to Yale. I think that the four-and-a-half years in the military really did contribute an ingredient to my persona that I would have missed and that would have been a loss.

S.B.: Should we make some sort of service like that mandatory; do you think?

L.F.O.: No.

S.B.: Not necessarily military service, but governmental service?

L.F.O.: No. I think most people can get that kind of discipline in other places, but it didn't happen to me. I had a very protected life. There is no question about it. But I went on from there to finish OCS, and our class was dispersed around to coast artillery units. This was not seacoast artillery; this was anti-aircraft artillery; and I was assigned, again by dumb luck, I guess -- I never knew how it happened -- to the Harbor Defenses of the Delaware.

S.B.: I was going to ask you: What made you go to OCS? Here you had a relatively safe position. Weren't you afraid that if you went --

L.F.O.: Well, I wasn't going to live like that. I mean it was a peasant existence, and a short time in OCS would get me back to the United States for a while.

S.B.: But you might have gotten a riskier assignment.

L.F.O.: Most people did.

S.B.: But you still wanted to risk it?

L.F.O.: Well, it was a sort of pride, and I didn't want to spend my life as a private. There was a terrible difference between being an enlisted man in the Army and an officer. I sometimes think of our relationship with the judges on the Court of Appeals: We're enlisted men, and they're like officers, and they treat us that way and regard us that way.

S.B.: We'll pursue that later.

L.F.O.: Maybe we won't. But, again, I was very lucky. I remember that we drove up East from Birmingham, I guess, or Montgomery. I remember going through Washington on our way to Delaware. I had never been to Delaware, and I didn't really know exactly where it was. Because there was no bridge then, we took the Mattapeake Ferry from Annapolis and spent our first night in Delaware on the top floor of the Henlopen Hotel.

S.B.: Oh, in Rehoboth, yes.

L.F.O.: It was hotter than blazes. This was now August, I believe, and then I was assigned, not to the main post of the Harbor Defenses of the Delaware, which was in Lewes, but to an outpost called Fort Saulsbury, twelve miles up the Delaware River. It was armed with two 12-inch cannon that had been taken off of a battleship that had been under construction when World War I ended and abandoned in the 1920s in accordance with a treaty that we had

with the British and the Japanese, the 5/5/3 Naval Armament Reduction Treaty, I guess, or something like that.

In any event, I was then a battery officer under the command of a slow, sleepy guy from Delaware named Charles C. Brown, who was a highway engineer in civilian life. We became very good friends, and his son, by the way, is one of my son John's closest friends, a fellow named Chris Brown. Have you ever heard him mention Chris?

S.B.O.: No.

L.F.O.: He's a very, very interesting lawyer in Baltimore. He has spent some time doing civil-rights cases down on the Eastern Shore. He is a very successful plaintiff's lawyer and an adjunct professor at the University of Maryland in Baltimore.

In any event, we maintained those guns, and then sometime that fall or winter, or the next spring, Fort Saulsbury was decommissioned, and I was left in command. I began to get mail addressed: "Commanding Officer, Fort Saulsbury, Delaware." They had left a little detachment there to close it down. Then I moved down to Fort Miles at Lewes, which is still there.

S.B.: This is when, the spring of 1943?

L.F.O.: Yes, the spring of 1943. We had a house in Rehoboth. That really was like the old Army. The colonel was a Colonel

Robert Phillips, who was a real gentleman. He always reminded me of Eisenhower. He looked a little bit like Eisenhower; he was very well spoken and a very decent, fine man. He had spent his whole life in the Army. He was a little too senior to do anything really rough, but he was a fine soldier and a very fair man.

We lived in Rehoboth, and there was a real old Army social life. On one Saturday night there would be a dance at the Officers' Club with a band drawn from the soldiers' orchestra; on the alternate Saturday night there would be a duplicate bridge game. The one thing that would get you shipped overseas was to screw up a bridge hand when you were the colonel's partner. I was, variously, a battery officer, a battalion adjutant, and then I was given command of an artillery battery for about a year. At the end there, I was Harbor Defense Adjutant.

S.B.: What is that word?

L.F.O.: "Adjutant." I guess you haven't been around the military. The adjutant is the chief administrative officer.

S.B.: Does it have anything to do with "adjudicate"?

L.F.O.: Well, it's administrative, and, although I hadn't finished law school, I was always either the defense counsel or the trial judge advocate in all of the courts-martial, of which we had a number.

When the war in Europe ended, Colonel Phillips was transferred; and the executive officer, the operations officer, and I were assigned to the Military Government School at Charlottesville. This was in the summer of 1945. We were trained there to be elements of the military government of Korea. Well, actually, we were to go to Japan first; however, the Japanese War ended while we were still in school, so our detail was assigned to be part of the military government of Korea.

We finished school and went to the Presidio at Monterey and stayed in Carmel, California, awaiting transportation to Korea. Two days before the unit sailed, my so-called "points" came in. Officers were discharged -- I suppose enlisted men, too -- in order of priority according to the number of points they had accumulated: so many points for length of service, so many points for overseas service, and so many points for something else.

My two colleagues, Sam Neill and Paul Dent, sailed to Korea. As a matter of fact, we just had a 50th Reunion of this harbor defense outfit last fall. Sam Neill was there, and he told us again -- you can believe that I had heard it before -- about that first winter, how rough it was. I think they arrived there in early January, 1946.

They were both electrical engineers, and the two of

them became the directors and chief executive officers of the public-utility industry in Korea, to reconstruct their utility industry. They stayed on as civilians and then went back into the regular Army and retired. One of them just died; the other is very old, but he has a wonderful, photographic memory. We spent about two days last summer at this reunion, with him reminding us of these events that we lived through, all the courts-martial that he remembered and all of that stuff.

S.B.: The reunion was at Rehoboth? Is that where you went?

L.F.O.: This was in Rehoboth, and then we went out to Lewes and went through all of our old installations.

S.B.: When you say that your "points came in," that meant you didn't have to go; that you were discharged?

L.F.O.: I was discharged and came back home.

S.B.: And you didn't know how they were accumulating, or did you have any sense of how they were accumulating?

L.F.O.: Oh, I knew; everybody knew.

S.B.: So you knew it was close?

L.F.O.: Oh, I knew it like the back of my hand, but the critical number for discharge changed constantly. There was a certain point when you weren't shipped overseas again, and then at another level you were discharged.

Just before we were leaving by train -- I think it was from Seattle -- my points came in to prevent transfer overseas. Then I was assigned to, and spent Christmas as the commanding officer of, a German PW camp. PW's are prisoners of war.

S.B.: Right.

L.F.O.: The PW's were picking cotton near Fresno, California.

S.B.: We brought them here?

L.F.O.: Yes, we kept some prisoners over here. There were a whole bunch of prisoners in Delaware. The day the war with Germany ended, we sent a convoy with machineguns mounted on them just to roll through the German PW camps to remind them that, although the camps were thinly guarded, there was a military presence nearby. But, apparently, these Germans thought I was one of them, and on Christmas Day I remember that they brought me these baked goods, cakes and cookies, and this beautifully carved thing -- I don't know what you call it -- that you put on your desk to identify yourself, with "Captain Oberdorfer" etched on it. I still must have it at home somewhere.

S.B.: And they had made it?

L.F.O.: They made it for me for Christmas. They were just sucking up, you know.

S.B.: My father was a refugee from Germany, but he was

drafted by the American Army. So he did a lot of interrogating of the --

L.F.O.: POW's.

S.B.: He did that in Europe; so, obviously, we had prisoners of war over there, too.

L.F.O.: We brought them back here and put them to work on the farms.

S.B.: That makes sense.

L.F.O.: Just like slaves.

S.B.: When you were drafted, you had no idea how long you would have to serve?

L.F.O.: Well, I think I was supposed to be in for a year. I mean at some point the draft was for a year, but I don't know what the policy was at that time. You probably remember that in the summer of 1941 the renewal of the draft passed the House of Representatives by one vote. It was almost abandoned.

S.B.: Is that right?

L.F.O.: That was in the summer of 1941.

S.B.: But, once we declared war, then there were no time limits?

L.F.O.: Oh, no. No, no. That was war.

S.B.: So when did you actually get discharged?

L.F.O.: In late January, 1946, and then I went back to law school for a semester.

S.B.: When did you finish?

L.F.O.: May or June, whenever it was.

S.B.: So it was convenient that you got discharged in January.

L.F.O.: It was a blessing that I was able to go back to law school, because I renewed my contacts in the larger world. Again, if I had finished law school before I went into the service and my career in the service had been what it was, I would have gone back to Birmingham upon discharge and worked in my father's office. That would have been the end of it. This way, I was up here in New Haven.

Before the war, Justice Black had offered me a clerkship for the 1942-1943 term, and, of course, I wrote him when I had to go into the service. I don't know where it is now, but I got a beautiful letter from him stating that he would keep the place open. When I came back, I didn't write him -- not that I wouldn't have written him, but I hadn't done so yet. He remembered that, wrote me, and renewed the invitation.

S.B.: For the 1946-1947 term?

L.F.O.: Correct.

S.B.: He had to kick someone out. How did he do that; do you know?

L.F.O.: I don't know. I never worried about that other stuff. Also, that was a time when there was only one law clerk.

S.B.: Right. So you went directly from Yale to Justice Black?

L.F.O.: Well, no. I went back home and took the bar in Alabama, again expecting at the end of the year with Justice Black to come back to Birmingham and practice.

That semester at Yale was an odd experience. I mean we had left there as callow youths. I remember that I arrived -- did I come back on the train? Somehow, I must have come to New Haven on the train. I don't know why, but my recollection is of meeting Byron White at the railroad station. He and I had been classmates. He went off to the service at the same time -- well, no, he was playing football that fall, so he never came back after the fall of 1941. He went into the Navy, I think. In any event, he had two semesters to go; I had one. I remember meeting him at the railroad station and driving up to the law school with him. White graduated whenever the summer school was over that year in 1946 and came down here and clerked for Chief Justice Vinson the same year I clerked for Black, and, of course, that friendship and

relationship have been very important to me, personally and professionally.

S.B.: Did Justice White go to military school, too?

L.F.O.: He was in the Navy. He had a very, very significant Naval career.

S.B.: So you took the bar, and, I take it, you passed the bar?

L.F.O.: Yes, I did. I took a bar review course given by Judge Walter B. Jones, who was a Circuit Judge in Montgomery, Alabama. His father had been a colonel in the Confederate Army and the first Confederate soldier to be appointed a United States District Judge.

S.B.: Jones was the first?

L.F.O.: The father.

S.B.: The father was the first?

L.F.O.: And Walter B. Jones was the most completely unreconstructed man I ever knew. I mean he was not like George Wallace. He knew what he was unreconstructed about. At the end of the course -- and it was really quite a good course; he was a fine lawyer. He just had this -- if you have ever read the history of that time, you'll see his tracks. He had some kind of a farm or country place. After the course, but before the exam, he had the

class out to his country place and disappeared at some point. The next thing we knew, up rose this figure on a beautiful horse in a Confederate uniform, waving his hat and saying to us, obviously all men, "Give 'em hell, boys," and then he rode off. It was incredible.

S.B.: How many were in your class?

L.F.O.: Oh, I don't remember. Jones was the editor of a publication called The Alabama Lawyer, which really was, and still is, quite a good little law review.

Actually, near the end of his life, my father wrote two little pieces for The Alabama Lawyer that Jones published. One was a story about the writing of my father's book, which all of the lawyers in Alabama knew. More people would ask me if I was related to the author of that book and how important it had been to them in starting their practice. The other article that he wrote was a story. The title of it was "Trifles Light as Air," in which he describes a criminal case that he witnessed as a child in Charlottesville.

The prosecutor in the case was trying a man for murder, based on circumstantial evidence that included certain pieces of physical evidence, such as a stocking and this and that. The point of the story is that the prosecutor misquoted "Othello."

He held these pieces of evidence up for the jury to see and said, "As Shakespeare said, 'Trifles light as air are proof as sure as Holy Writ.'"

I don't know if you know the line.

S.B.: I don't know it.

L.F.O.: And the defense counsel, in response, said that the prosecutor omitted the full quotation: "Trifles light as air are to the jealous proof as sure as Holy Writ."

The story ends with the jury acquitting the defendant and almost everybody going home happy. Jones published those two articles in The Alabama Lawyer.

S.B.: That your father wrote?

L.F.O.: Yes.

S.B.: What was your father's name?

L.F.O.: A. Leo Oberdorfer.

S.B.: What was your wife's maiden name, and what is your wife's full name?

L.F.O.: Elizabeth Weil.

S.B.: Tell us about the clerkship with Justice Black.

L.F.O.: Well, I think that probably was one of the pinnacles of my life. That was a wonderful experience. There was a single clerk. We had a lot in common. He had known my dad as a young

lawyer, and I remember my father visiting up here, and they were obviously very congenial. The year that I was there, as Black often said later, he did the most important thing he did as a judge, namely: to write his dissenting opinion in Adamson v. California. He wrote it, but I worked on that with him.

I have just read a chapter in a book that is in the process of publication by a professor by the name of Roger Newman. I don't know whether you have ever heard of him or not. He points out that Black had been trying for several years to reconcile his really narrow view of the Due Process Clause with his view of the preeminence of the Bill of Rights. Black deplored the idea of substantive due process; he had been one of those who bemoaned the Court's use of the Due Process Clause to knock down social legislation in the 1930s. In Adamson he was able to make that reconciliation.

Newman quotes Black as saying that if he hadn't been able to solve that dilemma, he would have been the most reactionary judge who ever sat on the Supreme Court, because he was going to knock down substantive due process every time it raised its head. This gave him the rationale for being very aggressive on the application of the Bill of Rights without having to resort, as he said, to those loose, unprincipled concepts that Frankfurter and

others used to distinguish between the items in the Bill of Rights that were representative of the best of Anglo-American law and those that were something else.

During that term he also wrote Everson v. New Jersey. Very early in the term, we had the injunction suit brought by the Truman Administration against John L. Lewis and the United Mine Workers in which Black staked out the proposition that a defendant in a contempt case should be entitled to a jury trial. He never quite made it with that, but that was his position.

That was the year that the Court had the Willie Francis case.

S.B.: Yes.

L.F.O.: Willie Francis was a young black who was strapped into the electric chair in Louisiana, and they threw the switch, and he blew the fuse.

S.B.: I remember.

L.F.O.: So they hauled him down and were going to burn him again. He sued and was represented by J. Skelly Wright. The Court, by a 5-4 vote with Black in the majority, affirmed the lower court order authorizing the execution.

S.B.: Oh, Black was in the majority?

L.F.O.: Yes. We also did the tidelands case, United States

v. California, which was a very significant and difficult thing. I think he did 30-some-odd opinions that year.

S.B.: Ownership of the tidelands?

L.F.O.: Well, ownership -- it was a very mushy opinion, but it remained the law. That is, the United States has paramount rights in the area below the mean high tide and out three or 12 miles into the sea, at least to the extent of being able to regulate the production of oil out of that. We just fudged whether or not that is a property right. It's a very squishy opinion, but that's what it said.

Of course, that was the year after Chief Justice Stone died, and they had that big brouhaha between Black and Jackson.

S.B.: As to who would be Chief Justice, you mean?

L.F.O.: Jackson thought he should have been, but wasn't, and he blamed Black for blocking him. Do you know the story?

S.B.: I thought they both wanted it, or something to that effect.

L.F.O.: Well, Black never admitted that. He said that -- well, what happened was that when Stone died, Jackson was the chief prosecutor at Nuremburg, and he was overseas. He and Frankfurter were having correspondence about the succession. I don't pretend

to know the details, and if I ever knew them, I've certainly forgotten them.

Jackson wrote a letter or leaked a story to a columnist charging Black -- I guess it was a letter -- with bullying the Court and further charging that he had been guilty of a gross breach of ethics by participating in the portal-to-portal litigation. Do you know the concept?

S.B.: Yes.

L.F.O.: The mine workers were represented by Black's former law partner, Crampton Harris, who had been his law partner before he went into the Senate, which by that time would have been 20 years earlier.

S.B.: Jackson thought that Black should have recused himself?

L.F.O.: Jackson charged that he should have.

S.B.: That Black should have.

L.F.O.: Yes. John Frank actually wrote an article in the Yale Law Journal -- I believe it was at about that time -- justifying Black's conduct under the then canon, but it was a very ugly thing. So far as I know, Black never said a word about it publicly to anybody.

A funny thing: I was just talking to Roger Newman the other day, and I have a distinct recollection of sitting with

Black at his desk when the secretary came in and said that the President was on the phone. I think this was when I was being interviewed in the spring before I went to work, or early summer on my way to Birmingham. My recollection is that the secretary came in and said that the President was on the phone, and I started to leave the room. He asked me to sit there, so I did.

It was a very brief conversation, but when Black got through, he said to me, "That was very nice. The President said to me, 'Hugo, I sure do appreciate it that you didn't get down in the pissmire with Bob Jackson.'"

The other day, when I was talking to Roger Newman, he said that John Frank distinctly remembers sitting at Justice Black's desk in his study in Alexandria when the President called. So who knows? I don't know whether my memory has teased me or not.

S.B.: But you both remember the same content?

L.F.O.: Yes. Newman says that Frank told him that story before I told it to him.

S.B.: Just so long as the content is the same.

L.F.O.: The Adamson opinion was written -- the first circulation was in the spring; and Black, with a twinkle in his eye, made a big point of asking me to hand-deliver it personally, hand-to-hand, to Justice Frankfurter and, if Frankfurter were to

permit it, to stay there while he read it.

S.B.: Did he permit it?

L.F.O.: Well, I handed it to him, and he took it. He was standing at that little lectern he had in his office. He was a speed-reader. He took the page-proof, and he flipped the pages, one after another, his face darkening. He got through it, and he sort of threw this thing back to me. He said, "I suppose at Yale they call this scholarship."

S.B.: And what did you say?

L.F.O.: I don't remember that I said anything. Later, the opinion was very severely criticized in the Stanford Law Review.

S.B.: The dissenting opinion or the --

L.F.O.: Yes, the Black opinion, by Professor Fairman, who charged that this was very poor scholarship and all wrong. He picked all kinds of holes in it.

The thesis of the opinion was that the legislative history, namely: the statements of Congressman Bingham, who was the Chairman of the House Judiciary Committee, I guess, or its equivalent, and Senator Howard, who was the floor leader of the thing in the Senate, had plainly stated that one of the purposes of the Fourteenth Amendment was to overrule the earlier decision in Barron v. Baltimore, to make the Bill of Rights applicable to the

states in haec verba.

The burden of Fairman's article, apart from picking holes in some of the things that were done in the appendix to the opinion, was to charge that you can only determine the purpose of a constitutional amendment from the legislative history by consulting the decisions of the ratifying states, whether by referendum or by what went on in the legislature.

S.B.: But not by the Congress that proposes it?

L.F.O.: The Congress is only part of the story. And then he made kind of personal attacks on Bingham and Howard. Bingham apparently was a dissolute fellow, and I don't know what he said was wrong with Howard.

I was in practice when that article was published, and I remember that he had a line in it, as I recall, saying that it may be understandable that a person with a limited education such as Justice Black would have made mistakes like that, but where was his law clerk?

I was really chagrined. I went to see Justice Black and told him that I wanted to write a response to Fairman, now that I was in private practice. When he wanted to say something the hard way, he could really say it in a hard way, and I remember Black said to me, "Don't you dare." And I never did, but I may

now.

S.B.: What would you have said?

L.F.O.: Well, I would have said one of the things that he said -- he said this later -- namely, that an experienced legislator and a scholar of history such as Black, who was one of the most efficient readers I ever saw -- let me digress. I don't know whether you ever saw a book by Dan Meador from Virginia about Justice Black's books.

S.B.: I know the book, but I don't remember it.

L.F.O.: He has in there photographs, I guess they are, of pages of Black's copies of this, that, and the other thing. While Black was reading, he would write in the margin, and when you look at the page, you can see that he is carrying on a dialog with the author. When Black would talk, for instance, about something that was happening at the Constitutional Convention -- it wasn't about the Bill of Rights, because there is not much legislative history about that. But I remember, particularly in dealing with the Everson case, that he had read this huge, long, multi-volume set of Jefferson's letters. He read them and annotated them, and he would say, "I know what those fellows were talking about."

His conversation about those sorts of things was as if he were sitting there with them when they did it. I mean he was

sort of like an eyewitness.

Now, I was going to say, among other things, that:

A person like Black, who had read these materials over and over again over several years and had long, personal experience with the legislative process, knew, for instance, that an individual of dissolute character, in the sense that he is a drunk or a womanizer or even a crook, can, nevertheless, say something important in a hearing or on the Senate floor that influences others and is followed;

When Howard and Bingham said what they said, which was not just a blip, but a learned kind of exposition -- and I think they were on the floor of the house and the floor of the Senate -- Black was entitled to make the judgment that one of the purposes of the Fourteenth Amendment was to overrule Barron v. Baltimore, having explained that the failure to have a Bill of Rights enforceable in the South by Federal Courts led to the Civil War and the perpetuation of slavery and all of the evils of it; and,

A Supreme Court Justice, a scholarly Justice with legislative experience and integrity, with no axe to grind, was a better expositor of the legislative history than any academic.

That is what I would have said.

S.B.: Why do you think Black's view never persuaded anyone

else on the Court?

L.F.O.: I think that -- my opinion isn't worth much, but I think that -- well, he did persuade others. I mean he got four votes --

S.B.: Ultimately?

L.F.O.: (Continuing) -- for that dissent.

S.B.: Three other Justices, along with Black, dissented?

L.F.O.: Yes. I think it was partly because he -- I know why he didn't get Rutledge and Murphy. I mean he got them, but they didn't buy the whole thing. They wrote separately.

He had a two-pronged position on Adamson. Part of the position was that the Bill of Rights is applicable to the states, and the other was sort of a Robert Bork position about strict interpretation. The Adamson opinion is a confluence of those two things. He has a paragraph in there on natural law that was anathema, I'm sure, to Murphy. One line of it is: "The 'natural-law' formula . . . should be abandoned as an incongruous excrescence on our Constitution." I'm quoting him.

And I think there was some legitimate criticism of some of the needlework on that opinion. I know he says that he did it all, but I also know that if I'd been more mature and more careful, I could have caught some of those things that I didn't.

But he wrote it; I didn't.

S.B.: If you were writing that opinion today, would you adopt that position? Was that your personal --

L.F.O.: Oh, I would. I don't know whether I could justify it, but I've always believed -- it was news to me that the Bill of Rights didn't apply to the states.

S.B.: So much for your Yale education.

L.F.O.: Do you know that at Yale Law School my constitutional law course was taught by a Professor Borchard, and the examination was true/false?

S.B.: Is that right?

L.F.O.: Oh, yes. But, in any event --

S.B.: That's actually a good true/false question. I'm surprised you didn't get it wrong.

L.F.O.: It may have been on it. Maybe that's one that I missed. But, in any event, I believed then, and believe now, that the application of the Bill of Rights to the states was the sine qua non to establishing federal authority in the states, particularly before blacks had a vote.

I mean there were judges like this Judge Jones who probably understood the Constitution, but were not going to enforce it -- not ever. There were people like that. Maybe it shouldn't

have happened; maybe it couldn't.

Of course, a few years ago the University of Alabama had a symposium memorializing Black's 100th birthday. You possibly know about it.

S.B.: I remember that.

L.F.O.: Brennan spoke there, and one of the things he spoke about was the Adamson opinion. He said that it's true that the court never adopted Black's thesis; he may have lost the battle, but he won the war. The Bill of Rights, with the possible exception of the \$20 jury and something else, is now applicable to the states.

And God bless it! I think it is one of the most important things that the Court has done since the Civil War in terms of bringing the Constitution to bear where the rubber hits the road. Of course, nobody disputes this now. By the selective process, it worked out correctly; but I suppose that my participation in that probably was the professional high point in my life.

S.B.: Maybe we'll save this, but I guess the question, maybe for next time, is: How has it influenced how you judge?

L.F.O.: How I judge? Oh, I don't have the problem. We don't have a state here.

S.B.: Actually, I didn't mean Adamson. I meant your clerkship, your experience with Black, your tutelage.

L.F.O.: Oh, how has that clerkship influenced me?

S.B.: Yes.

L.F.O.: That was my education in the Constitution. I just told you that I had a true/false exam on the Constitution, and, in between, I didn't have much of a brush with constitutional questions. I had some, but that's where I reach back, to that experience. That's where the high hard one is.

S.B.: And how about working with Justice Black as a judge?

L.F.O.: Oh, it was marvelous, and, just as a child's relationship with his parents forms that child's grown-up relationship with his or her own children, it certainly shaped my way of dealing with law clerks. I mean it's just instinctive. There's no discipline around here; they're peers. I bring them in here, and they work with me. Some of them have disappointed me terribly, and I suppose some disappointed Black. But, from the first day on, there are no secrets. They are involved in everything in which I'm involved. They hear me cuss the Court of Appeals and all of the other things. I do a draft; they chop it up. They do a draft; I chop it up.

S.B.: And that's how he related to you?

L.F.O.: Except, I'm frank to say, that he wrote more of his stuff than I do. Of course, he didn't have to sit in these trials. There were precious few first drafts that I did for him. He would write them on a yellow pad, and they would then be typed by his secretary. Sometimes they were in longhand, and you had to read them yourself before they got to the secretary.

S.B.: How old was Justice Black when you clerked for him?

L.F.O.: Sixty-one.

S.B.: He was 61 then?

L.F.O.: Yes. Here's a picture of him that he gave me when I left.

S.B.: So at that point he had been on the Court for ten years.

L.F.O.: Ten years.

S.B.: And then he was on for another 20?

L.F.O.: More than that. He died in 1971, so it would be 25 years, I guess. From 1947 to 1971, that's 25 years.

S.B.: Was there anything else you wanted to say about that period of your life?

L.F.O.: In the summer of 1940 down here, working as a volunteer, really, in the Antitrust Division of the Department of Justice when Thurman Arnold was the Assistant Attorney General, I

worked for Walton Hamilton. I don't know if you know that name or not. He was an economics professor who taught at the Yale Law School, and I should have mentioned him in my pantheon of heroes there.

He taught a course called "Public Control of Business." During my editorship, he wrote an article in the Yale Law Journal called "The Special Competence of the Supreme Court," which was quite a remarkable piece. He was a remarkable writer and a very interesting man.

During the summer of 1940, Boris Bittker, Dick Solomon, a man now deceased named Elmer Batsell, and I had a little office in the Department of Justice. We were supposed to do a manual for Antitrust Division lawyers on the rules of evidence. We were not compensated; nor should we have been. It really was a ridiculous assignment. I don't think any of us had had a course on evidence, and we didn't write anything, either, but we had a wonderful time.

The four of us just sort of bummed around town in a way. We spent time up on the Hill. I remember watching debates about the draft up on the Hill, and we met a lot of people and learned a little bit about Washington.

It was during that time that I first was thrown with

Black. I guess my father suggested that I call him, and I did, and Black invited me to lunch several times. He had me out to the house. He learned that I was a tennis player, and I played tennis with him.

S.B.: All right. This ends the February 20th interview.

* * * * *

S.B.: February 28, 1992. Judge, when we last talked, you were clerking with Justice Black, but, before we go back to that, I thought I would ask you to say something about how your family first came to America. What are your origins?

L.F.O.: One of my grandfathers came from Wurttemberg in Bavaria in 1848 or 1849. That was my paternal grandfather, Bernard Oberdorfer. He came originally to New York. I gather he was sort of a peddler and ended up in Charlottesville, Virginia, where he settled and became a merchant. By the time my father was born, he was quite a leader in the community. My Grandfather Oberdorfer was a founding director of People's National Bank in Charlottesville, which merged and merged and merged into something that is gigantic now, and was one of the founding trustees of the very small Reform Jewish congregation in Charlottesville. There is a little synagogue there still on the square opposite the statue of Stonewall Jackson in Charlottesville.