

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.

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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.

His wife came to the United States, also from Bavaria, by way of England. I don't know where they met or where he married her. He had five children by his first wife. When she died, he married her sister and had five more children. I never knew him. He died in 1905 before I was born. My maternal grandfather --

S.B.: Judge, which wife was your father's mother, the first?

L.F.O.: No, the second. My father had a twin brother. They were the last children. I understand that my grandmother was invalidated by their delivery and was an invalid the rest of her life. She survived into my lifetime, but I don't have any real recollection of her. She lived her last years with my aunt and her husband and my bachelor uncle, my father's twin brother, in New York.

There are some wonderful stories about my father and his twin brother. They were literally identical twins. I couldn't tell them apart, and there were stories about my uncle when he would visit in Birmingham. He would walk the streets by himself to some degree, and for weeks afterwards people would come up to my father and berate him because he didn't speak to them.

My uncle was a doctor in New York. He and my father were the first members of the family to go to college. They lived

at home and went to the University of Virginia. My father went on to the law school; and my uncle, the medical school.

My maternal grandfather, Louis Falk, for whom I'm named, came from Schneidermühl. It's probably in East Germany. It might be in Poland. I don't know. I understand he was quite German. He settled in Decatur, Alabama. He had relatives in Florence, Alabama, when he came in the late 1840s and became the postmaster in a little roadside place which is named for him, Falkville, Alabama. It's still a post office in a little town.

He had a career in Decatur that was very much like my other grandfather's career in Charlottesville. He was very highly respected. He was one of two or three, I guess, or possibly the only Jewish person, in the town. He married into a very distinguished family. His wife was named Goodhart. She was from Cincinnati. Her brothers, Albert and Philip Goodhart, went to New York and were the predecessors of that group of investment bankers that included the Lehmans and the Schiffs and those people. As a matter of fact, my uncle married Governor Lehman's sister, Hattie, who was quite a famous lady.

My grandmother died when my mother was two years old. There was some dispute with the Goodhart family, I gather, as to whether my grandfather should raise a daughter in the wilds of

Northern Alabama, and it was resolved by their sending a housekeeper to my grandfather, somebody named Miss Emma Oppenhagen, who would also be a surrogate mother for my mother. Miss Emma had been working as a seamstress for the Goodhart family in Cincinnati. She was a very strict Methodist and raised my mother in the Methodist Church, which accounts for her being the Prohibitionist that I described earlier.

My Grandfather Falk lived all of his life in Decatur. He was rather successful. He was a director of the Alabama and Southern Railroad, which became the Louisville and Nashville Railroad. He was a director of the bank there. He was a cotton merchant and, as a matter of fact, did business with my wife's grandfather's firm in Montgomery, a cotton firm.

My mother was one of the first women from Decatur, if not the first, and certainly one of the first women from Alabama, to go to Vassar. That was partly because of the connection with the Goodharts. She spent her summers and her holidays in that rather luxurious environment in New York.

When I grew up, I became quite friendly with my Uncle Philip Goodhart, who was then probably in his eighties. I used to stop there in New York, going back and forth to college and law school, and visit with him. He was quite an interesting fellow.

He knew a lot about the financing of what he called the reconstruction of the South. Apparently, he had underwritten bonds for Southern states and things like that. He was the nearest thing to a grandfather I knew, because my maternal grandfather died just before my mother and father were married.

Both of my grandfathers were soldiers in the Confederate Army. I have some records of that from the Archives, and, with respect to my paternal grandfather, there are some publications about the unit that was organized from Charlottesville. I think it was sort of a home-guard unit. I don't recall that he ever got into action, or anything like that, but there is a story about his going over the hill to see his sister in New York. He went through the lines to visit her. He had heard she was sick. He came back, was arrested, and was about to be court-martialed when the war ended. He might well have been shot. He was, obviously, vulnerable to being charged as a deserter.

My other grandfather, Louis Falk, was in a cavalry unit, again locally organized, commanded by Colonel Harris, whom I met late in his life when I was a little boy. They were all captured by a Union cavalry force commanded by a Colonel or General Streight. My Grandfather Falk spent several years of that war in

prison in Chicago. I used to hear tales from my mother about what a traumatic experience and degradation that had been.

I have some pictures of both of them. They were really quite distinguished-looking men. Louis Falk, in this picture that I have, was in his seventies. He had very luxurious white hair and a white moustache, and he looked very much like Robert E. Lee, or the picture of him does. I have always taken a lot of pride in, or at least gotten a lot of conversation out of and satiated my Civil War interest by, the idea that both of those fellows were soldiers in the Confederate Army, and I think I'm influenced by the great success both of them had in integrating themselves into what could have been a hostile society.

S.B.: Do you know anything about their views on slavery?

L.F.O.: I know that my paternal grandfather was a Grover Cleveland Democrat who opposed William Jennings Bryan. I can't imagine that they had any toleration for slavery, but they also probably would not have made waves. I don't think they made waves. I think they sort of merged with the background. From what I know about them, I can't imagine either one of them taking any leadership in a civil-rights movement, for example.

S.B.: During that time.

L.F.O.: I think they were both probably conservative

Democrats.

S.B.: Okay. Now, to get back to your career, what did you do after your clerkship with Black?

L.F.O.: I was torn between going back to Birmingham and accepting offers that I had here in Washington. I had one offer from Covington. Somewhere along the way, I got to know Gerry Gesell in my first year here, and he made me an offer there at Covington, which I very seriously considered and turned down because that firm was too big! It was then 40 lawyers!!

That year at the Court they had a Special Master hearing the case of Georgia v. The Pennsylvania Railroad. The Special Master was Lloyd Garrison, of Paul, Weiss, Wharton, and Garrison, which had just been formed. Garrison came to me -- I don't know how we got together; maybe we met at lunch or something at the Court -- and offered me a job in their New York office, but I didn't want to go to New York. They had a small Washington office. It was headed by Randolph Paul.

Randolph Paul was the author of the first scholarly treatise on the federal income tax and a very distinguished scholar and writer in the tax field. He had been General Counsel of the Treasury during World War II and was a protege of Secretary Morgenthau. He was the senior partner in the firm, but he ran it

from Washington. Well, I don't know whether he really ran it. I guess he was the senior partner because he probably had the most business. They had a small office here that consisted of Carol Agger Fortas and Louis Eisenstein. It was exclusively a tax practice.

Paul interviewed me, and they interviewed me and offered me a job. I said, "I don't want to do tax work."

They said, "Well, we've got about \$100,000 worth of non-tax business that we turn down every year. Why don't you come here and do the non-tax work?"

Well, I accepted the offer. My salary was \$5000. I thought it was a fortune. The clerkship paid \$4200.

S.B.: What year was this, Judge?

L.F.O.: This was 1947. They had a lovely townhouse at 1614 Eye Street, opposite what is now the Cafritz Building, which didn't exist then. They were building it during the time I was at that firm.

I never saw a non-tax case that I can remember. I went in there and immediately got into tax work. They were very good. Louis Eisenstein was a brilliant writer. He had collaborated with Paul in the writing of Paul's treatise on the federal estate tax, and, of course, Carol was very, very bright.

She was wired in with the people I knew about, that is, the Blacks and the Douglasses.

S.B.: Was she married to Fortas at the time?

L.F.O.: Oh, yes. We were thrown with Fortas and Thurman Arnold and all of those people.

S.B.: Were they in practice together as Arnold and Porter?

L.F.O.: Arnold and Fortas was the name of the firm. It was before Porter joined them. As a matter of fact, I had interviewed with them, and I probably interviewed at a couple of other firms, but I accepted this offer from Paul, Weiss.

S.B.: And how long were you there?

L.F.O.: I was there until 1951. I guess it was four years. I remember the very first case that I worked on was what was called a family-partnership problem. The Supreme Court had sustained a deficiency in Tower v. The Commissioner. I think that was the name of the case. At any rate, when people wanted to spread their income, they made their wives and their children partners, and the Internal Revenue Service challenged that.

(THIS PORTION OF THE ORAL HISTORY IS SEALED.)

(END OF SEALED PORTION.)

S.B.: What made you leave?

L.F.O.: I was doing some work with Lloyd Cutler. I don't know whether it was in connection with the Yale Law School Association. I remember he and I were involved in the creation of that, along with Gesell. It may have been something that he was doing with Carol and me, or with Paul and me. In any event, he came to see me at my office one day and asked me if I would be interested in coming over and being their tax partner.

S.B.: He already had a firm?

L.F.O.: It was Cox, Langford, Stoddard and Cutler. I think there were six or seven of them.

(THIS PORTION OF THE ORAL HISTORY IS SEALED.)

(END OF SEALED PORTION.)

S.B.: One of the first lateral hires?

L.F.O.: I suppose. I went there, I think, in the spring of 1951, and, remember, I was then five years out of law school. I was almost ten years out of the time when my class would have graduated, and this was probably one of the boldest things I have done. (THIS PORTION OF THE ORAL HISTORY IS SEALED.)

(END OF SEALED PORTION.)

S.B.: Had you become a partner at the other firm yet?

L.F.O.: No.

S.B.: At Paul, Weiss?

L.F.O.: No, no. There were three partners in the office and two associates by that time. Howard Rea was the other associate. He's the fellow that had been a year ahead of me in law school and was hired at about the same time I was. I just saw a narrowing tunnel and moved, and, again, at that time I faced up to the issue of going back to Birmingham.

My father was in his 70s by then. He was probably the same age I am now, and I thought -- and I think he was relieved

-- that I didn't want to start up and stress him with the responsibility of helping me get started. I could see my mother fussing over us and my in-laws clucking at whether I was conforming to their ideas of what a young man should do. And my wife really didn't -- I mean really didn't -- want to go back to Alabama.

S.B.: I guess it was an easy decision. At that point it was easy?

L.F.O.: It wasn't easy because there was still a lot of pull back there and a lot of opportunity. As a matter of fact, my original idea in going with Paul was that there weren't any tax specialists out in the provinces. There certainly weren't any in Birmingham.

I thought that if I got the experience and the patina of Paul, who was the preeminent tax lawyer in the United States, I would be able to get a good start in Alabama. The reputation that Paul had was fully justified, both in terms of his work as a lawyer and his writing.

I don't know whether you ever saw the book by Mertens. Did you ever take a tax course? That was originally Paul's book. Then he collaborated with Mertens on revisions of it, and, eventually, Mertens took it over. I don't know who brings it out. Some publishing company -- I think Callaghan -- brings it out.

S.B.: I remember Bittker's book. I used his book. I don't remember Mertens.

L.F.O.: Bittker was a good friend. Another cute incident in the Paul experience -- I don't think I've told you about this, Paul's friendship with Jerome Frank?

S.B.: No, you haven't.

L.F.O.: Jerome Frank, as you know, was also a prolific writer, a liberal, and later a judge on the Second Circuit. As a matter of fact, Pat Wald was his clerk when she came out of law school, probably the first woman clerk. In any event, Paul and Frank were very close friends. I remember having dinner with them in New York at a German kind of restaurant. I can't recall the name of it.

In any event, during my work there, Paul wrote an article, really quite a remarkable piece, called "The Responsibilities of a Tax Advisor." He had very successfully bridged the gap between the role of a public servant and an advocate, and he drew the line on legislation and tax policy. He lobbied for strong tax enforcement, and he opposed the community-property amendments. He was for a heavy estate tax and advocated the closing of loopholes all over the place. This article addressed that, and it was published in the Harvard Law Review and

the Tax Law Review.

When he did this article, he asked me to help him with the footnotes, which was an appropriate thing for an associate to do. I didn't write it; he wrote it; but I did some editing and suggesting; and I did several of the footnotes. When I handed him the things where the footnotes were and he looked at them, he said, "Oh, my God, we don't have our Jerome Frank footnote."

I asked, "What's Jerome Frank got to do with this?"

He replied, "Don't you know? Jerome and I have an understanding that every time he writes something, he cites me; and every time I write something, I cite him."

So I said, "Okay," and I looked up some of these things that Frank had written. I went through the first thing I turned to, found the place where he'd cited Paul, and I cited that. It's in the Harvard Law Review, just like that.

S.B.: That's great.

L.F.O.: I had one other Paul, Weiss anecdote, but it has escaped me now.

S.B.: We can come back to it later, if you remember it. So where was Lloyd's office?

L.F.O.: It was cheek-by-jowl with the Ring Building.

S.B.: Where is that?

L.F.O.: The Ring Building is at the corner of 18th and M. At that time it was the only office building built here during the war. As I recall, the Cafritz Building had just been completed, but this had been there all along. Now, the offices of Henry Kaiser Enterprises were in the Ring Building, and the principal client of Cox, Langford, Stoddard and Cutler was the Kaiser Company. We must have received 50 percent of our business from them. So our offices were as close to them as possible. For a while, we were in an old townhouse sort of thing, with one of those birdcage elevators. Mine was quite a nice office on the second floor, with a big picture window looking out onto Connecticut Avenue.

When the Kaiser Company moved their office to the Cafritz Building, part of the firm went to the Cafritz Building to be cheek-by-jowl with Chad Calhoun, who was the Washington rep of the Kaiser Company.

The senior partner was Oscar Cox, who died -- it now seems young -- at about 60, after I had left the firm and while I was in the government.

S.B.: How long were you with Cox, Langford?

L.F.O.: I stayed with Cox, Langford from 1951 to 1961. I became a partner in 1952 and left in 1961 to go into government.

S.B.: Was it still called Cox, Langford when you left?

L.F.O.: Yes.

S.B.: And what --

L.F.O.: I was their tax partner.

S.B.: And then who appointed you for the government position?

L.F.O.: Well, I was appointed by President Kennedy.

S.B.: Okay. Let's go back. When you were with Cox, Langford,
you did --

L.F.O.: I did tax work. (THIS PORTION OF ORAL HISTORY IS
SEALED.)

(END OF SEALED PORTION.)

S.B.: All right. Let's move on. Why did Kennedy appoint you? To what position did Kennedy appoint you?

L.F.O.: I was Assistant Attorney General in charge of the Tax Division. I was not really selected by Bobby Kennedy at all. I didn't know Kennedy, and I didn't really like what I knew about him from a distance. However, Byron White was a classmate of mine and had clerked for Vinson. Byron had been chairman of Citizens for Kennedy, and after the election he was staying at our house when he was selected to be Deputy Attorney General. White recommended me and sort of gave me a choice. I could have been -- well, I don't know if I could have been, but at least he talked about my being his deputy or head of the Office of Legal Counsel, which eventually went to Katzenbach, or head of the Tax Division.

I decided on the Tax Division because that was my area of expertise, and I liked the idea of running a big law organization -- a throw-back to my experience as a battery commander in the Army. I was afraid that the Office of Legal Counsel might be terribly political, and, as I say, I had watched Robert Kennedy from a distance in labor hearings and those kinds of things. I wasn't sure that the counsel I gave him would be something that he would accept. I didn't want to go over there and get into a fight. I wanted to go over there and do something. So

I would say that Kennedy appointed me because Byron recommended me.

S.B.: And how long did you serve?

L.F.O.: In Justice?

S.B.: Yes.

L.F.O.: I was there from January or February of 1961, I guess, until June of 1965.

S.B.: What did you do? What were some of the highlights?

L.F.O.: Well, that was a wonderful job. First of all, the Tax Division was a very exciting place. It had been the subject of a Congressional investigation because a predecessor of mine, once or twice removed, had been convicted for fixing a tax case, and one of the results of the investigation was that the place had really been shaken down and tightened up.

I remember being briefed by the permanent staff, this group of old pros. They had these briefing books with profiles of the principal employees in the division, the history of the division, the past, present, and projected budget, the table of organization, and a precis of the principal cases. They talked to me during the better part of a day, using these briefing books to illustrate whatever point they were making, and those books were really the best example of that sort of thing I have ever seen.

Manny Sellers was Acting Attorney General then. He

was from Mobile, Alabama. He had been in the Tax Division when it moved into the building. He was a dedicated and very able, wise older man. There was another fellow by the name of Lee Jackson, who was the head of the Appellate Section, just straight as an arrow, and all of them had been traumatized by this experience of having their boss shot down. They knew all of the pitfalls.

They had an administrative officer by the name of Guy Tadlock, who was the best at that I've ever seen. They went through the briefing with me, and, finally, we came to the middle of the afternoon when we were about ready to break up. Sellers said to me, "Excuse me. Now, we haven't said anything to you about the job of the Assistant Attorney General. Of course, that's your job, but different Assistant Attorneys General have done it differently, and we just wanted to expose these options to you and let you think about it."

Then he said, "You can come down here and do nothing but argue cases in the Supreme Court. The Solicitor General hates tax cases. He doesn't like to give them to juniors, but if there is somebody here who can do them, he'd love to give you those. We have six or so a year up there. You can argue cases in the Courts of Appeals; you can go out into the trial courts and sharpen your skills as a trial lawyer, if you want to do that; or you can sit

here and be an administrator. Tadlock is very good at it, but it's a full-time job. We compromise a lot of cases. We have a Compromise Section, and some of your predecessors have made it their business to work on compromising.

"But," he said, "the truth of the matter is that this place is so well organized that you can go out and play golf, 'cause, as I said, it's so well organized that your old grandmother could run it."

And that was true. It was a very smooth-running outfit when I got there, and it was impressive.

S.B.: So what did you do, play golf?

L.F.O.: No. I argued some cases in the Supreme Court, and I did some administration. I spent a lot of time on the criminal cases. We had some very sensitive criminal cases at the time, for example, Bernard Goldfine and Adam Clayton Powell.

Again, just to show you how luck plays out, I was able to establish my reputation with the Attorney General with one of the first of these high-profile cases. Does the name "Sergeant York" mean anything to you?

S.B.: No.

L.F.O.: Well, Sergeant York was the greatest hero of World War I. He got the Medal of Honor for killing or capturing 127

Germans, single-handed, one afternoon. He was a sharpshooter from Tennessee, a marvelous shot, and he was a big hero. He'd written a book and hadn't paid taxes on the royalties, or something like that.

Following the staff's suggestion, I jumped on these headline cases and was looking at the Sergeant York case. It wasn't a criminal case; it was a civil case, in the hands of a fellow in the Internal Revenue Service by the name of Singleton Wolfe, who was going to do something with it.

One afternoon, I got a call from Singleton Wolfe and made arrangements with him to meet with me in my office. This was ten days, or so, after I started working there. Wolfe and I were sitting there, talking about the case, when the phone rang. It was the Attorney General. The substance of the conversation was: Congressman so-and-so from Tennessee is here, and he wants to talk to me about the Sergeant York case. Do you know anything about it?

I replied, "As a matter of fact, I do."

So I went up there, and, of course, I was right on top of it. It was just the dumbest kind of luck. The Congressman and Robert Kennedy talked about it, and I told them that I didn't think it could be settled. They got on the phone and called Sam Rayburn and arranged for a Congressman to pass the hat to pay off

York's debt. He was this World War I hero, and he was mortally ill, or something. That was my first business conference with Robert Kennedy, and it worked out pretty well.

S.B.: So the individual Congressmen contributed?

L.F.O.: Yes.

S.B.: And paid off the debt?

L.F.O.: Yes. I don't know whether it was their money, but that's where it came from, particularly Rayburn and this other guy, a Republican from East Tennessee. At any rate, that was an event.

S.B.: And Kennedy was impressed?

L.F.O.: Yes; I was, too, with my luck. Then the other thing is that, of course, I really did find it to be a full-time job. I remember arguing a case in the Fifth Circuit involving water depletion. This is another "lawyer" story. We had lost the case in the District Court. The taxpayer was represented by Ed Kahn of the Arent, Fox firm. Do you know Ed Kahn?

S.B.: I know Doug Kahn very well.

L.F.O.: Right; that's his brother. The case involved a huge amount of money. At issue was a depletion allowance for all of the farmers who were served by this large underground body of water, and it involved several states. There apparently was evidence that it was a finite resource.

The Court of Appeals panel consisted of Chief Judge Hutcheson, who was from Texas, a friend of Felix Frankfurter and that sort of thing; Griffin Bell; and the District Judge from my home town in Birmingham, Hobart Grooms. We were the appellants; and when I got up to argue, the first thing Hutcheson said to me was: "Whoever heard of a depletion allowance for water? I've been down here in Texas for 75 years (or however long it had been), and I've been sitting on this Court for 40 years (or however long), and I've never heard of anything like this."

"Well," I said, "it's pretty strange; I agree. And if you don't have any questions, I'll sit down." Nobody had any questions, so I sat down.

Then Kahn got up and started going through the expert testimony and the findings of fact. When he had finished, I couldn't say much, really, since they had told me there was nothing to it; and, by God, Hobart Grooms wrote the opinion and decided for the taxpayer.

There was an article recently in the Post by none other than Dale Russakoff, who is also from Birmingham, explaining that that ruling has cost the government billions of dollars in tax revenues. I don't know whether I could have won it or not, but I never again accepted an invitation from a court to sit down.

S.B.: Why did you leave in 1965?

L.F.O.: Well, Kennedy had gone to the Senate. I hung on there because there was some remote chance that I would get a judicial appointment. I really wasn't all that anxious to go back into private practice.

S.B.: Why?

L.F.O.: Well, I didn't need the money, and I was sort of carried away with the Kennedy mystique. I felt an urge for public service, and I enjoyed being on what usually seemed to me to be the right side of something.

During the period that I was in the government, some of the lawyers at Cox, Langford had joined with John Pickering and others at a firm called Wilmer and Brown, which was the Washington office of the Cravath firm, to form what is now Wilmer, Cutler, and Pickering. I went with them.

S.B.: How big was that?

L.F.O.: I think I was the 25th lawyer.

S.B.: You left the government to go with them?

L.F.O.: Yes, in June of 1965. Just to go back for a moment to my government service during this period, since you asked me what I did, I spent an awful lot of time on civil-rights matters. I was the only Assistant Attorney General from the deep South. I

had a lot of connections in Alabama and these people down in New Orleans and all over, and I was very interested in that. Burke Marshall and I worked together very closely, or I worked with him very closely.

S.B.: He was the head of the Civil Rights Division.

L.F.O.: Yes. He was head of the Civil Rights Division, and we had been good friends before. He was also brought to Robert Kennedy by White. I was at Oxford, Mississippi, when Meredith went in there. Walter Lord has written a book about the fracas at Oxford called The Past That Would Not Die, which is based on the log that we maintained during that episode.

S.B.: You were there as Assistant Attorney General for the Tax Division?

L.F.O.: When we got going at Justice, Kennedy used his Assistants in a very flexible way. I was involved heavily in the civil-rights thing; I did some work on antitrust matters; and I'd gotten involved in criminal cases. I remember being involved in the discussions about whether to sue AT&T. We became a kind of board of directors. We ate lunch together and exchanged views.

S.B.: Who were the other Assistant Attorneys General?

L.F.O.: Well, of course, starting out, White was the Deputy Attorney General; Nick Katzenbach was the head of the Office of

Legal Counsel.

S.B.: Who was Solicitor?

L.F.O.: The Solicitor was Archibald Cox; Burke Marshall was the head of the Civil Rights Division; Jack Miller, Herbert J. Miller, was the head of the Criminal Division; Ramsey Clark was the head of the Lands Division; and William Orrick was the head of the Civil Division.

S.B.: Orrick?

L.F.O.: Yes. He's now a District Judge in San Francisco.

S.B.: And there's a law firm with his name; right?

L.F.O.: Yes. That's his father's firm. It was a wonderful group.

S.B.: Do you think that was a good way to run the Attorney General's Office?

L.F.O.: It was a good way for him to run it. I mean he was able to do it. That fellow really did have remarkable leadership qualities.

S.B.: Bobby?

L.F.O.: Yes, indeed.

S.B.: Did you come to like him?

L.F.O.: Yes, I admired him very much.

S.B.: More than his brother?

L.F.O.: I didn't know his brother that well. I admired his brother, too, from what I saw. I was involved with the President on some of the civil-rights things, particularly that meeting that was the beginning of the Lawyers' Committee for Civil Rights Under Law, that famous meeting in the East Room of the White House.

S.B.: Tell us about that.

L.F.O.: I organized that.

S.B.: What was that about?

L.F.O.: Well, it has been written up in a lot of places. After the courthouse-door incident in Tuscaloosa involving Governor Wallace, President Kennedy made a speech calling for the enactment of what became the public-accommodations provision of the Civil Rights Act and I think an Equal Employment Opportunity Act. He asked the Attorney General to organize a series of meetings at the White House of leaders of various segments of society, or maybe the Attorney General did it on his own. Some of those things were started spontaneously.

There was a meeting of business leaders; there was a meeting of religious leaders; there was a meeting of academics; and there was a meeting of lawyers. They were separate meetings, each addressed by the President, dramatizing and taking advantage of the public concentration on this really rather black-and-white meeting

between Wallace and Katzenbach; that is, "black and white" in the sense of what appeared to be all right and what appeared to be all wrong in this meeting. This was after the problems down at Oxford during the previous fall when Meredith had been resisted by a mob.

Bernard Segal, a lawyer in Philadelphia who was at that time Chairman of the ABA Judiciary Committees and later President of the American Bar Association, organized this group. He was thrown with us by virtue of his role in selecting judges, or passing on judges. A lot has been written on this subject. As a matter of fact, a woman named Ann Connell is now writing a book about it.

S.B.: What year was this, Judge?

L.F.O.: This was 1963, June of 1963. I pretty well organized that meeting. I invited everybody and did the agenda and went to it.

S.B.: How many people attended?

L.F.O.: About 250 lawyers.

S.B.: At the White House, seriously?

L.F.O.: Yes, in the East Room. They were addressed by the President and the Attorney General; by Lyndon Johnson, who gave a marvelous talk; and Dean Rusk, who was a Southerner.

S.B.: Were they all white males?

L.F.O.: No, there were blacks there.

S.B.: Any women?

L.F.O.: I don't remember that there were any women, but the list is available. My papers on this are at the Kennedy Library. I had quite a lot of files on it. At that meeting the President asked Bernard Segal and Harrison Tweed, at my suggestion through the Attorney General, to accept responsibility for chairing and organizing this Lawyers' Committee for Civil Rights Under Law, and that's where it began.

I became the point of contact with Segal and some other lawyers, and I worked with them from inside the Department on forming a corporation and all of those things. I went up to New York a lot of times. It's something that I am very proud of, my role in that. It has been a very important, last battle of the Civil War in many ways.

S.B.: How were they funded then?

L.F.O.: They raised their own money.

S.B.: Which is still the same.

L.F.O.: They are still doing it, primarily from law firms. I told you that Bobby Kennedy was flexible. After the Bay of Pigs, he was very much involved -- in fact, he was probably the senior person in the government -- in trying to resolve these differences

with the Cubans, both before and after the missile crisis.

First of all, at the Bay of Pigs we had put ashore a battalion or a regiment of Cuban exiles, and they were captured, causing a lot of embarrassment to the Administration and a feeling that they had the responsibility to get those people out of there. Before the missile crisis there had been negotiations conducted by a fellow by the name of Donovan, Jim Donovan, a lawyer in New York, to work out an exchange of the prisoners for tractors. The negotiations were conducted on behalf of the Cuban Families Committee, which was made up of the families of these Cuban exiles who were now prisoners, and they funded the thing, so far as I know.

That idea had collapsed, and after the missile crisis there were some blips generated by Donovan, I guess, about renewing negotiations. Castro didn't want tractors; he wanted something else.

On the Saturday after Thanksgiving of 1962, Kennedy invited me out to his house.

S.B.: Bobby?

L.F.O.: Yes, Bobby. He invited me out to his house to talk about this problem in terms of how people could make tax-deductible contributions in a way that would be effective. I took the

responsibility for getting together with Stan Surrey, who was the Tax Legislative Counselor to the Treasury, and Mort Caplin, who was the Commissioner of the Internal Revenue, and prepared a memorandum on the tax consequences and added to it some other considerations.

I remember that we worked over the weekend and presented this to Kennedy on Monday morning. He took me over to the White House, and we explained it to the President. Following that, I set up in my office in the Tax Division the whole organization, with remote control, for raising what amounted to \$50 million worth of prescription drugs, or medicine, dried skim milk, and I forget what all.

Between that day, which was a Monday, and Christmas Eve, we organized the shipment of this stuff to Cuba. Part of it went down by freighter; part, by Pan-Am planes. We involved the Red Cross, and they took it over, a fellow named Bob Shea at the Red Cross, who was in charge of their disaster relief.

S.B.: Was it the Shea of Shea and Gardner?

L.F.O.: No, he wasn't a lawyer. He was sort of a social worker, a wonderful man. I remember he told me once that he could go 72 hours without sleep. His favorite disaster, he told us one day, was earthquakes, because they scared people so that they were completely manageable. But he was involved in it.

It was advisable to keep it out of the Department of Justice as much as possible. We persuaded John Nolan, Barrett Prettyman, Ray Rassenberger, and John Douglas to become assistants to Donovan as representatives of the Cuban Families Committee, and they did the solicitation of the drug companies, the major drug companies. At that time they were able to make a contribution of pharmaceuticals, for instance, at market value, so that some of them actually made money by contributing to this project. But it was a very, very dramatic thing when the prisoners came out on Christmas Eve.

S.B.: Of 1962; right?

L.F.O.: Right.

S.B.: Why did they want to keep it out of the Department of Justice?

L.F.O.: Well, we just weren't supposed to be doing that kind of thing. It was --

S.B.: Why?

L.F.O.: Well, for the same reason that Oliver North shouldn't have been doing it.

S.B.: But there was no law. Was there a statute?

L.F.O.: No, but it wasn't the right thing to do, and we weren't too interested in Congress knowing about it, and they

weren't interested in knowing about it. We were greatly facilitated in that respect because right after this Monday, or whatever day it was, there was a big newspaper strike in New York and elsewhere. The AP went down; the UP went down; so there weren't any reporters around. We were able to do a lot of this without it getting into the paper.

But, as soon as it was over, Ed Guthman, who was the Public Information Officer, made every document available to the press, and everybody was urged to answer all questions from any reporter.

S.B.: Who was Guthman?

L.F.O.: Guthman was the Public Information Officer at the Department of Justice.

S.B.: Why did he open it up --

L.F.O.: Why did he?

S.B.: (Continuing) -- once it was over?

L.F.O.: To make sure everyone understood that there wasn't any cover-up; that we weren't ashamed of what we were doing; but that we just didn't want Castro to know about it until it was over. We particularly didn't want Castro to know, although he probably did, that the government was behind it. As far as he was concerned, he was dealing with Jim Donovan. Barrett Prettyman and

John Nolan went down and met with him.

S.B.: What do you think the effect would have been if he had known that the government was behind this?

L.F.O.: Well, who knows? He was a volatile fellow; he was an enemy.

S.B.: How do you spell "Guthman"?

L.F.O.: G-U-T-H-M-A-N. He was later editor of the Philadelphia Inquirer, and he was Bob Kennedy's AA at the Senate.

S.B.: Didn't Donovan have a very colorful nickname?

L.F.O.: You're thinking of Wild Bill Donovan.

S.B.: That's a different Donovan?

L.F.O.: This was a different Donovan.

S.B.: This was not the Donovan of Donovan & Leisure?

L.F.O.: No. This was a Brooklyn lawyer, a very, very strange man. When the prisoners came out on Christmas Eve, John Nolan came out with them. He'd gone down there and then came out with them. John and I were at Homestead Air Force Base, and when the last plane landed, we got on the phone to call the Attorney General. Donovan had also come back with them and had gone public immediately. He made a big press release about how he had done all of this kind of stuff, and he talked about it.

Kennedy heard that on the radio, and they sent an Air

Force Jet Star down to return Nolan and me to Washington. It was wonderful. I'd been going back and forth to Miami in an Air Force Jet Star. It was high living. They'd sent the Jet Star down to take us back to Washington, so we'd be home for Christmas. Nolan and I were at the Homestead Air Force Base on the telephone, and Kennedy and Katzenbach were both at home. This was at about 1:00 a.m. on Christmas morning. We had a four-way hook-up, and we talked about a number of things. I forget what all we talked about. Kennedy then asked, "What about Donovan? How is he getting back?"

I said, "Well, I thought we'd bring him back."

He said, "You can't do that."

"Why?"

Kennedy replied, "I don't think he can get his head through the door."

But we brought Donovan back.

S.B.: You managed.

L.F.O.: It wasn't easy.

S.B.: You said earlier that, initially, you didn't think much of Bobby Kennedy, but then --

L.F.O.: I didn't know him.

S.B.: But then you said later that you came to admire him.

L.F.O.: Yes.

S.B.: Is that correct?

L.F.O.: Yes, indeed; very, very much so. I really got to know Bob Kennedy. We became good friends. When he ran in 1968, I left the firm on a leave of absence and had the same job in his campaign that White had had in the John Kennedy campaign. I was co-chairman of something called "Citizens for Kennedy." The night he was killed, I was back here. I was supposed to go out to meet him the next morning on the West Coast and start the real campaign. That was a bad time.

S.B.: Yes, I remember that very well.

L.F.O.: The Cuban-prisoner thing was also written up in several books: one by Haynes Johnson called The Bay of Pigs and another by David Wise. I can't remember the name of that one.

S.B.: When it was revealed that you-all had masterminded it, what was the reaction of the public?

L.F.O.: It was very supportive. About two weeks later the President went down to Miami to review the brigade in the Orange Bowl, and he took all of us down with him; that is, all of us who had worked on this thing. It was really a very, very moving experience -- moving for me. He took a couple of us around and introduced us to the commanders of the brigade.

He was very generous about what we had done, and we had worked like hell. I had never worked so hard on anything in my life. I didn't go to bed much, either. We were trying to be covert about it. I would get in my car as if to go home and then drive out to Andrews Air Force Base, get on an Air Force plane and fly out to Miami for a meeting. Then I'd come back and be at the office the next morning.

It was a real tough detail, but, you know, there was one thing about that group at Justice, and I wonder if I've ever said this on the record anywhere: Most, if not all, of us had been junior officers in the military not too long before then, and several things that we did, particularly in the civil-rights area, for example, working with those Marshals and the Freedom Riders at Oxford and at the University of Alabama, drew directly on that experience.

S.B.: In what way?

L.F.O.: Well, you were commanding troops; you were making the kinds of quick decisions that you would make in the military; and you were taking action without having written a detailed memorandum about it. But it's very much like the kind of thing that Oliver North got himself into. Some of those things were -- they weren't illegal, but they were not what you would normally do in a government office.

S.B.: Was there anything else at Justice that we should talk about?

L.F.O.: Well, I could go on for days. Those are the high points. I mean that was a very, very exciting period to have been in the government, and particularly in the Department of Justice.

S.B.: How has that experience affected the way you handle your judgeship now, in identifiable ways?

L.F.O.: Well, I think that I probably have a perspective about civil rights that may not be shared by people who didn't have the experience of being there sort of at the turning point and being personally involved in it. I don't know how many people here ever really confronted George Wallace, or saw a mob of whites trying to lynch a black man, or lived, as I did, in a segregated society and woke up to what was really going on. Having lived in that and accepted it, really, as a young person and then coming back and seeing what a horror I had tolerated, I think, gives me an exposure that is different from most white people, anyway. That's one thing.

S.B.: Do you think the fact that you were a Southerner, and had grown up that way, impacted on the way you were able to operate?

L.F.O.: Oh, yes. It made me more useful than I would have

been otherwise.

S.B.: People accepted you?

L.F.O.: Marshall turned to me and Kennedy turned to me because I was au courant and also because of all of the people I could talk to. It was not just because of my experience.

One of the things I should mention here is that in 1964, after President Kennedy died and while Robert Kennedy was still in the government, I accepted an invitation to speak to the John Tyler Morgan Chapter of a fraternity at the University of Alabama about the then-pending civil-rights legislation. I still have the manuscript of the speech, and it was probably as much of an expression of my philosophy as it was maturing at that time as anything I've done.

This fellow Morgan had been a Senator from Alabama at the turn of the century and had been in the Civil War as something or other. I worked on this speech for a long time, and it was, first of all, kind of an anesthetizing appeal to the spirit of the South: how Jefferson and Madison had been Southerners and what a contribution they had made to the Bill of Rights, and all of those things.

Somehow, I got hold of a speech that Morgan, himself, had made. I don't know where I got it from, but he may have made

the speech at the dedication of Arlington Cemetery. He was the Southerner who spoke there, and it was one of those things about healing the wounds and all of that; we are all brothers again. Then I made the point that this Civil Rights Bill was probably going to pass, and if it did, it was going to be the law of the United States.

Now, this was a group of lawyers, and they had a choice: They could resist the law, as had been the practice of some, and counsel their clients how to evade it, avoid it, or ignore it, or they could treat it as they would a tax law or some other kind of legislation; that is, they could be lawyers and advise their clients how to comply with the law.

I was shaky about what was going to happen because Wallace was still foaming at the mouth down there, and I'm sure he had a lot of supporters among that audience. There were, you know, several hundred people in the auditorium. Well, I got a big hand and a lot of nice pats on the back and letters and things like that. It was a very, very important moment in my life.

S.B.: When you went back to Wilmer, Cutler, and Pickering, what did you do there, and how long were you there?

L.F.O.: I was there from 1965 until coming here in 1977. What is that, 12 years? I was a tax partner, but I also got more

into general litigation. The first thing that happened to me there -- obviously, I didn't have any clients, and they didn't have too many.

S.B.: Was there any question about whether you could go back?

L.F.O.: Oh, no. When they formed the firm, or when Cutler and Pickering were talking about it, they invited me to lunch at the Willard. I was still in the Department, obviously. As a matter of fact, I think Cutler and the group in the Cox, Langford firm had proposals from this Cravath branch, Wilmer and Brown, and from another firm in New York. They asked me which of the two I would prefer if I came back and, in effect, invited me to return right there.

I did think about doing what I am doing now. I was interested in going from the Department of Justice to the bench. I really was. That's what I would have preferred to do, but there was no way that Lyndon Johnson was going to appoint a protege of Robert Kennedy to anything.

S.B.: Oh, is that why? I was going to ask you why you thought you didn't get an appointment.

L.F.O.: Oh, no question about it. Of course, I don't know. Bobby Kennedy might not have appointed me anyway, but I think he intended to, and would have, for something on the bench, if he

thought that I wanted it. There was a fine bond between him and me at that point. If that is what I'd wanted and if he'd been in charge, I think I would have gotten it.

S.B.: It's interesting to think about what would have happened if he had been elected President.

L.F.O.: It would have been a better world.

S.B.: I agree. When Lloyd asked you which of the two marriages you would prefer, did you pick the Cravath connection?

L.F.O.: I don't remember. I don't remember.

S.B.: In the time you were at Wilmer, Cutler, they went from what, 25 or so lawyers to --

L.F.O.: One hundred and something.

S.B.: (Continuing) -- to one hundred and something?

L.F.O.: Yes.

S.B.: Then I guess it was Carter who appointed you here. How do you think that came about, or do you know how that happened?

L.F.O.: Yes, I do, or at least I think I do.

S.B.: Actually, let me interrupt myself.

L.F.O.: Yes.

S.B.: What was your feeling about Wilmer, Cutler getting that big?

L.F.O.: I didn't like that.

S.B.: Did you try to prevent it?

L.F.O.: Wilmer, Cutler was a very democratic organization. At Cox, Langford, Oscar Cox had a much larger share than anybody else. He pretty well ran it with an iron hand -- well, not an iron hand, but without too much participation by anybody else.

Lloyd and John ran a remarkably democratic operation at Wilmer, Cutler. Except for a few, there were no real discrepancies between the compensation that one fellow received and another, and they weren't enormous. Everybody had a say. Everybody had a lot of respect for Lloyd, and we very seldom did something he didn't want to do, or failed to do something he wanted to do. But, again, that was leadership. That wasn't dictated. He was, and is, a very, very remarkable man. The health of the firm is a tribute to the leadership of Lloyd and John. They were a wonderful pair, with John being the gentle fellow.

S.B.: A cuddly grandfather.

L.F.O.: Yes. John had a wonderful expression about how to heal differences among the partners. Do you know what a "poultice" is?

S.B.: It's like a --

L.F.O.: It's a home remedy. For example, if you make a tobacco poultice to draw out a bee sting, you make a big wet mush

of tobacco and put it on there, and there are some other kinds of things like that to put on a bruise. Nobody knows whether they really work, but that's a poultice. John Pickering used to say that he could resolve serious differences by the application of a green poultice.

S.B.: Green? Oh, all right.

L.F.O.: It heals a lot of things. Just give them a raise.

S.B.: So the firm was growing, and I guess everyone was growing at that time; is that right? All of the firms were growing?

L.F.O.: They grew a lot more after I left, really. But it must have been about a hundred and some odd when I left, 120 or something like that. It's over 200 now, I believe.

S.B.: Even so, I don't think it grew quite as much as Covington and Arnold and Porter did.

L.F.O.: That's correct.

S.B.: There seemed to have been some effort to --

L.F.O.: Well, there is, and there always has been. They tried to keep a proper ratio of associates; and, of course, when we started out, we used to say originally that any time we hired an associate, he could assume he'd be a partner. We don't hire people unless we want to keep them.

Until recently, my wife's family had a farm down in Alabama that raised cattle, several hundred head of cattle. I remember being told down there: "You don't want to get too familiar with the cattle because you're going to have to send them off to slaughter." In dealing with the associates, I got to feeling that I didn't want to get too friendly with them because we were going to have to start making hard decisions about their careers. As it turns out, the associates who didn't make it at Wilmer, Cutler have done very, very well. I mean it's a badge of honor and a real cachet to have been there. Sally Katzen sent me --

S.B.: The alumni list?

L.F.O.: (Continuing) -- a list of the alumni. Have you seen it?

S.B.: Yes, I get it whenever she updates it.

L.F.O.: You're on it.

S.B.: Well, it's true. I have always said about Wilmer, Cutler that it is characteristic of it that it could conceive of these people as alumni and make it a positive thing to be. I would imagine that's not true of other firms. I don't know. Maybe other firms have started it, but I doubt it. I think it is unique.

L.F.O.: Pardon?

S.B.: It is a tribute to the firm and to Sally. I think it was Sally's baby. When did they start making cuts?

L.F.O.: I don't remember. It was somewhere along the way. It's the geometry of the thing.

S.B.: Yes. Okay. I started to ask you this, and then I interrupted you: How did you get appointed to the bench?

L.F.O.: Well, when Carter was campaigning, I had some correspondence with a fellow down in Texas by the name of John Harmon, who had been a Black law clerk.

S.B.: A clerk for Justice Black; right?

L.F.O.: Yes. He was selected by Griffin Bell to do something in the organization during the transition and asked me to come down and talk to Bell about being Deputy Attorney General, which I did. That went forward for awhile; and then, as I understand it, Mrs. Carter decided somewhere along the line that she wanted the Mayor of Pittsburgh, Flaherty, to be the Deputy Attorney General. So I was derailed from that. I would have been delighted to do that. I'd known Bell and liked him.

At any rate, that didn't materialize, and I remember we went skiing up in Vermont that spring and stopped off with some friends in New Hartford, Connecticut. I saw in a newspaper there -- it might have been The New York Times -- that William B. Jones

of this Court had tendered his resignation and was going to take senior status.

Now, there was an effort to interest me in taking the opening on the Federal Circuit. There was a vacancy there in the Federal Circuit Court of Appeals. I think it was then the Court of Claims, probably. I didn't want to do that. We had had tax cases in the Court of Claims, and they were always very tedious things. Everything was done on paper; the judges were detached and not very interested and not very interesting. I said that I would rather come over here.

At that point, Bell recommended me to Carter, and, while the thing was pending up there, Carter got the good idea of having these local screening committees. So my recommendation was withdrawn, and I went through the screening process.

S.B.: Who did that? What kind of people were on the screening committee? I mean how did they get picked?

L.F.O.: I guess they were picked by the Administration. I don't know. I think that in the states they were picked by Senators. I'm trying to think. I knew most of the members of the committee, but I don't remember their names now. There was a woman who was an investment counselor named -- her last name begins with a "w," but I can't remember it. I think Bob Watkins over at

Williams and Connolly was on it. Something tells me that Dan Reznick was on it. Joe Tydings was the Chairman.

S.B.: Was there any problem getting through it for you?

L.F.O.: I don't think so. I never heard about it, if there was.

S.B.: Was there any issue on the Senate confirmation?

L.F.O.: No. Oh, I did have an episode during that. I don't know whether you want to hear this or not, but there was a Senator Scott from Virginia who had the reputation for being the dumbest Senator in the Senate. Do you remember him?

S.B.: No.

L.F.O.: In any event, he had defeated Bill Spong, who had been a wonderful Democratic Senator. Scott was a Republican.

The fellow at the Department of Justice who was supposed to steer people through the confirmation process advised me that, since my appointment was for the District of Columbia, it wasn't necessary to consult this Senator. I can't remember the name of the guy at Justice, but it will come back to me. At any rate, when the nomination went up, it was Louis Oberdorfer of Virginia, and I think the hearing was supposed to be on a Tuesday.

S.B.: Why did they say you were "of Virginia"?

L.F.O.: Because that's where I live.

S.B.: Oh, you do?

L.F.O.: I live in McLean. Then, on a Friday before the Tuesday of the hearing, I got a call from Scott's office saying that the Senator understood I was a constituent of his, and he would like to meet me. So I made an appointment for the Monday afternoon before the hearing on Tuesday, and I went over there and waited around and waited around. He wasn't there.

Finally, his AA, who, again, was a Dartmouth man -- it's a small world, isn't it -- took me over to a little hideaway that Scott was in over in the Capitol. I can't remember where it was now, but the Senators have those things. I went in there, and here was this guy who looked like somebody dressed like a barber pole. I will never forget it. Scott had on brilliant red galluses, and I forget what color pants. He was in his shirtsleeves, talking to somebody else.

I sat over in a corner until he was through, and then he took my resume. You have seen it. I remember he started out by asking me, "How can you be a judge when you've worked for Hugo Black?"

I said, "Well, Justice Black was a strict constructionist of the Constitution. I'm going to construe the Constitution strictly."

That passed, and then he got down to Paul, Weiss. I don't know what was in his head, but he asked, "Who is this Paul Weiss?"

When I started to say, "Randolph Paul was" -- and I've described Paul to you the way I did to him -- Scott said, "Tax lawyer, that goddamned Bazelon was a tax lawyer."

S.B.: Bazelon?

L.F.O.: And then I said what you just said, right about the way you said it, and he said, "He didn't know anything more about running the Lands Division than flying to the moon. Why in the hell did they put a tax lawyer in the Lands Division?"

Stupidly, I replied, "Well, Senator, I thought Judge Bazelon had been head of the Office of Alien Property," which is what I remembered.

He said, "I hope, if you get to be a judge, you'll be more accurate with the facts."

We discontinued the conversation very shortly after that; and, as I went out with his AA, I said to him, "You know, the Senator never noticed, unless he learned it somewhere else, that I used to work for Robert Kennedy. Now, Senator Ted Kennedy is going to be at that hearing tomorrow, possibly. I don't know how he and Scott get along, but I can imagine; and I'm not going to go to that

hearing with Senator Scott until you assure me that you have confronted him with the fact that I worked for Robert Kennedy. Then, if he wants to see me tomorrow morning, I'll be glad to come and see him."

The AA said, "Well, he's gone home."

I said, "Well, you call him at home, and I'm going to call you tonight to verify that you've done it."

I went home, and, not having heard from him, I called this guy at about 8:00 o'clock. He told me that he hadn't called the Senator yet. So I said, "Well, I'm going to hang up, and you call him. This is serious business."

He called back a few minutes later and said, "I spoke to the Senator, and he'll see you in the office at 8:00 or 8:30." I got there early and waited and waited, and he didn't show up. The hearing was at 9:30 or 10:00 o'clock, and he was supposed to introduce me. I didn't know how important that was. It probably wasn't important, but I thought it was.

Finally, his secretary came in and said to me, "Mr. Oberdorfer, the Senator called in and said he's had a flat tire," which was probably a good solution. My daughter was then working down there for somebody and had a friend who worked for Senator Mathias. At the very last minute, they went around and got Mathias

to come and introduce me to the Committee.

S.B.: Why did you want him to know that you had worked for Robert Kennedy?

L.F.O.: Well, because I didn't want him to say to the Senate: "This guy concealed from me" --

S.B.: Right. So he never showed, Scott?

L.F.O.: I haven't seen him since.

S.B.: Do you think that was deliberate?

L.F.O.: Oh, yes. Oh, yes, it was his way out of a box.

S.B.: What impact on your income did becoming a judge have?

L.F.O.: Oh, it reduced it substantially, maybe half or more; but I've always had more than enough money.

S.B.: From family?

L.F.O.: It wasn't a problem for me at that point.

S.B.: From --

L.F.O.: From family and my children were grown by then. We don't live that elaborately.

S.B.: So that was not an issue for you?

L.F.O.: No, not really.

S.B.: Well, apparently, it wouldn't have been even in 1965, when you were hoping to get it.

L.F.O.: Well, in 1965, I probably would have gotten the same

salary as a judge that I had in the government. I would have gone right from the Department onto the bench.

S. B.: All right. What were your earliest experiences as a judge?

L.F.O.: Well, one of the first things that happened was a case involving a claim by a man named Williams at the Library of Congress that he had been fired on account of his race. He was a black from the Caribbean somewhere, and he had been the leader of the black rebellion up there. Apparently, the Library of Congress was known at the time as the "Plantation," and, although he wasn't a lawyer, he represented himself to be a lawyer.

Williams had gone to Dalhousie Law School up in Canada for two years, but had falsely stated that he was a lawyer and had been representing people very successfully in their discrimination claims. Apparently, he had been the primary instrument for causing Congress to include the Library of Congress in Title VII, and that made him unpopular with the leadership over there at that time, one of whom was Senator Hayes from Ohio. I had that case when I came here, and I --

S.B.: Wait; what was the case?

L.F.O.: His suit charging under Title VII that he had been fired in retaliation for his civil-rights activities.

S.B.: Okay.

L.F.O.: Now, they said that they fired him because he represented himself to be a lawyer when he wasn't. I ruled for him, but, at the same time trying to be a wise guy, I said I wasn't going to reward him for this because of his transgression. Instead, I ordered that the damages be paid to the District of Columbia Bar, or some body, to fund the provision of legal services for the people whom he couldn't serve any more because he wasn't a member of the bar. This was a perfect rookie error, in terms of not really understanding the limits on the power of a Federal Judge.

Well, the case went up to the Court of Appeals, and Judge Wilkey --

S.B.: Who appealed it?

L.F.O.: Well, the government.

S.B.: The government?

L.F.O.: The government appealed it.

S.B.: The plaintiff didn't appeal it?

L.F.O.: I don't recall that he did. In any event, Judge Wilkey, writing for himself and somebody else, just took my hide off. I mean it was a scathing slap, not on the wrist, but on the mouth. I realize now that this is something that District Judges

aren't supposed to do, that is, be too innovative.

S.B.: How did you feel when you got reversed?

L.F.O.: I felt angry. My idea really was that I had -- this goes back. I was aware of how over generations, or centuries, if a black male got out in front, he would be shot down one way or another. I assumed that they weren't paying any attention to his not being a member of the bar until he put his thumb in their face, and then they made an issue out of it. I couldn't prove that, of course, but that was the inference that I had drawn, based on my experience, which, undoubtedly, Wilkey didn't share.

S.B.: Well, did you get reversed because of the remedy or because you found --

L.F.O.: Both; in other words, Wilkey said that Williams' misrepresentation of the fact that he was a member of the bar when he had only two years of law school was an offense that justified the termination. I said that maybe it justified a reduction in grade, or transfer, or something like that, but not termination. It was a judgment call, but the Court of Appeals has the last word, or the next-to-the-last word.

S.B.: I take it that in that case that's where it stopped.

L.F.O.: Oh, yes.

S.B.: You were angry but you couldn't -- what did you do?

L.F.O.: Nothing. I just fussed.

S.B.: To whom?

L.F.O.: To my clerks and to myself. By the way, one of my clerks, who came here with me from Wilmer, Cutler, had disagreed with me from the beginning and had told me that, in his view, I was wrong right from the start. But, in my mind, I brushed that off. He hadn't had the experience I'd had in the South; he didn't know how it worked on the plantation.

S.B.: Who was the clerk?

L.F.O.: Lyman Spitzer was his name. His father had been in my class at law school, as a matter of fact, and he showed up at Wilmer, Cutler. Then, when I was appointed, I invited him to come over here with me, and he was my first law clerk, a nice fellow.

S.B.: He's not still there?

L.F.O.: No. No, he's back in his home town. His father had been a lawyer, and his family was an established family in Toledo, Ohio. He went back there.

S.B.: When you started, you had only one clerk; right?

L.F.O.: No. I was entitled to two. What happened was that Judge Jones, by that time, was on senior status and was ill. His clerk, Bob Cave, came in here. I took over Judge Jones' docket, and Bob took over me. The clerk came with the docket.

S.B.: So you had two clerks.

L.F.O.: He came with the docket, so to speak.

S.B.: Was it a one-year clerkship?

L.F.O.: Yes, I've always done it for one year.

S.B.: And do you still have two?

L.F.O.: Yes.

S.B.: Is there any sort of history in the court connected with being a freshman? Do you get treated differently, or is there any sort of --

L.F.O.: No, not really.

S.B.: How many judges were on the court when you came?

L.F.O.: The same number as now. There were 15 active judges.

S.B.: It's still the same?

L.F.O.: Yes.

S.B.: Is that about the right number, in your view, or would you --

L.F.O.: Oh, I don't think we're pressed.

S.B.: No?

L.F.O.: No. I mean we are afflicted with drug cases, but that's not quantity or difficulty. It's just that they are distasteful, inappropriate tasks that have been thrust at us.

S.B.: They should be in the Superior Court, you mean?

L.F.O.: Yes, most of them.

S.B.: That's the recent controversy with Stephens, then --

L.F.O.: Yes.

S.B.: (Continuing) -- in that he's bringing more Federal indictments?

L.F.O.: Because we are under the mandatory-minimum sentences and the sentencing guidelines, he can put them away longer if he brings them here.

S.B.: So his move to bring them here has come about only since the mandatory-minimum sentences and the sentencing guidelines?

L.F.O.: Oh, I don't think he was -- he may not have been the U. S. Attorney before the mandatory --

S.B.: The move to bring more drug cases in Federal Court was triggered by the mandatory-minimum sentences; is that it?

L.F.O.: Well, I think it was the Administration's decision. I don't think it was necessarily Stephens' decision. They may be doing that nationwide. I don't know.

S.B.: But, in your opinion, it came after the mandatory-sentencing provisions came into effect?

L.F.O.: No, I don't know that. There were some mandatory

sentences. The particular episode that was litigated -- and I guess it's still pending -- involved some cases that came to Harold Greene and to me and to others. The defendants had been indicted in the Superior Court, and then their cases were picked up as a bundle and transferred over here. That was certainly after the guidelines.

Now, the U.S. Attorney may say that it wasn't just because of the mandatory minimums that he brought them here. I don't know whether he would say that or not, but I believe otherwise.

S.B.: What is the litigation? Is it a legal challenge to whether or not they can be brought here, or just on the merits of the trial?

L.F.O.: No. There's a speedy-trial question as to whether the speedy-trial time includes the time when the case was pending in the Superior Court or whether the speedy-trial time begins only when the indictment is brought here and the case closed in the Superior Court.

S.B.: And if you count the whole thing, then --

L.F.O.: Some of them would be barred.

S.B.: And that is the case that is now before Judge Greene?

L.F.O.: I think that's pending in the Court of Appeals.

S.B.: Oh, I see. I'm worried about your doctor's appointment. Do you still have it?

L.F.O.: Pardon?

S.B.: Don't you have a doctor's appointment?

L.F.O.: No. I cancelled that, but I do have to excuse myself for other reasons. I want to catch a plane.

S.B.: Okay. Do you want to stop, or do you want to continue?

L.F.O.: I think we had better stop.

S.B.: Okay.

L.F.O.: There is a lot more we can talk about. It's up to you. I would be pleased to meet again, if you want to.

S.B.: Oh, certainly.

L.F.O.: All right.

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S.B.: It is Friday, the 13th. It's our third session with Judge Oberdorfer. Judge, when we last left off before you went skiing, I think we had gotten you to the point where you were on the bench, and you discussed how you had gotten appointed. I guess what I would like to do now is talk about your experiences on the bench. Why don't you describe what you think it's like to be a trial judge and whether or not it has met your expectations or turned out to be different from your expectations.