THE HONORABLE
LOUIS F. OBERDORFER

Oral History Project
The Historical Society of the District of Columbia Circuit

Oral History Project
The Historical Society of the District of Columbia Circuit

United States Courts
District of Columbia Circuit

THE HONORABLE LOUIS F. OBERDORFER

U.S. District Court for the District of Columbia

Interviews conducted by:
Susan Low Bloch, Esquire

February 20, February 28, March 13, and April 23, 1992

TABLE OF CONTENTS

Preface. i

Oral History Agreements

Honorable Louis F. Oberdorfer. ii

Susan Low Bloch, Esq.. v

Biographical Sketches

Honorable Louis F. Oberdorfer. vii

Susan Low Bloch, Esq.. viii

Oral History Transcript of Interviews on

February 20, 1992. 1

February 28, 1992. 79

March 13, 1992. 145

April 23, 1992. 189

Index. A1

NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

© 1998 Historical Society of the District of Columbia Circuit.
All rights reserved.

PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcripts are available at other locations.

Such original audio tapes of the interviews as exist, as well as the original 3.5" diskettes of the transcripts (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

Historical Society of the District of Columbia Circuit

Oral History Agreement of Judge Louis F. Oberdorfer

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Louis F. Oberdorfer, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs of the interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs are subject to the same restrictions herein provided.

2. I also reserve for myself and to the executor of my estate the right to use the tape recordings, digital recordings, transcripts, computer diskettes, and DVDs and their content as a resource for any book, pamphlet, article or other writing of which I or my executor may be the author or co-author.

3. I authorize the Society to duplicate, edit, publish, and permit the use of said tape recordings, digital recordings, transcripts, computer diskettes, and DVDs in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

4. The provisions of paragraphs 1, 2 and 3 of this Agreement are subject to the following exception: Pages 87-89, 90-91, and 96-101 and so much of the tape of the second interview on February 28, 1992, and the diskettes as contain the material on these pages shall be closed to all users until 2050 A.D., except with my express written permission.

5. This Agreement supersedes and replaces the "Interviewee Oral History Agreement" I executed on July 21, 1997, which was accepted by the Historical Society of the District of Columbia Circuit on August 5, 1997.

[Signature of Interviewee] [Date]

PAUL A. PALMER
NOTARY PUBLIC
District of Columbia
My Commission Expires March 15, 2013

SWORN TO AND SUBSCRIBED before me this 14 day of October, 2010.

Notary Public

My Commission expires: 03/15/13

ACCEPTED this 27th day of October, 2010, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Schedule A

Tape recordings, digital recordings, transcripts, computer diskettes, and DVDs resulting from five interviews of Louis F. Oberdorfer on the following dates:

Interview No. and Date	Number of Tapes or DVDs	Pages of Final Transcript
1st interview February 20, 1992	2 tapes	1 - 78
2nd interview February 28, 1992	1 tape	79 - 144
3rd interview March 13, 1992	1 tape	145 - 188
4th interview April 23, 1992	1 tape	189 - 222
5th interview January 17, 2008	1 tape	223 - 241

The transcripts of the interviews are contained on two diskettes.

Historical Society of the District of Columbia Circuit

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with Judge L. Oberdorfer for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Susan Low Block, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Susan Low Block 12/6/95

Signature of Interviewer Date

SWORN TO AND SUBSCRIBED before me this 6th day of December, 1995.

Teruko R Scriven

Notary Public
Teruko R. Scriven
Notary Public, District of Columbia
My Commission Expires April 14, 1996

My commission expires _____

ACCEPTED this 5th day of December, 1997, by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M Gribbon

Daniel M. Gribbon

Schedule A

Tape recording(s) and transcript resulting from four (number) interviews of Judge Louis F. Oberdorfer (Interviewee) on the following dates:[1/]

2/20/92 - 2 tapes

2/28/92 - 1 tape

3/13/92 - 1 tape

4/23/92 - 1 tape

1/ Identify specifically for each interview, the date thereof and (1) the number of tapes being conveyed, and (2) the number of pages of the transcript of that interview.

The Historical Society of the District of Columbia Circuit

Oral History Agreement of Benjamin F. Wilson

1. Having agreed to conduct an oral history interview with Louis F. Oberdorfer, for the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, Benjamin F. Wilson, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recording, digital recording, transcript, computer diskette, and DVD of the interview as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society to duplicate, edit, publish, including publication on the internet, and permit the use of said tape recording, digital recording, transcript, computer diskette, and DVD in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Benjamin F. Wilson [Date] 10/21/2010

SWORN TO AND SUBSCRIBED before me this
21ST day of October, 2010.

Notary Public

My Commission expires: January 14, 2012

ACCEPTED this 27th day of October, 2010, by Stephen J. Pollak, President of the Historical Society of the District of Columbia Circuit.

Stephen J. Pollak

Schedule A

Tape recording, digital recording, transcript, computer diskette, and DVD resulting from the interview of Louis F. Oberdorfer on the following date:

Interview Date	Tape or DVD	Pages of Final Transcript
January 17, 2008	1 tape	223 - 241

The transcript of the interview is contained on one diskette.

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 Morrisson, 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 Paolo 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, Immmunity 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 classifed 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-marshal 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 signficant 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 enforcible 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 Wurttemburg 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 invalided 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 Douglases.

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, Langord, 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 <u>The Bay of Pigs</u> 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, l20 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 Rezneck 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.

* * * * * * * *

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.

L.F.O.: Well, that's several questions. The job has changed a great deal in the years that I have been here. When I first came to the bench, we had relatively few criminal cases. Our docket was dominated by civil cases. Also, at that time District Judges were invited fairly frequently to sit with the Court of Appeals. They were somewhat short-handed, I think; and, also, I believe that the Court of Appeals, as it was then constituted, was reaching out to establish a relationship with judges on the District Court.

Those two characteristics of the work have now been completely reversed. For the month of March, except for three days, I am sitting in criminal cases, and all of them are drug cases, one hardly distinguishable from the next. I tried a Title VII case in February. I believe that was the only civil case I've tried in 1992, and this is now March 13th. The Court of Appeals does not invite us to participate any more. Maybe they are no longer short-handed. In any event, the job is quite different in those respects.

S.B.: I take it that that is a negative kind of event?

L.F.O.: Yes; oh, yes. I think the entire Federal Judiciary is very restive about the saturation of our docket with criminal drug cases. In this district it is particularly acute, and the judges, including myself, are especially restive because the drug

cases that come to the Federal Court are really street-crime cases that should be tried in the local Superior Court. The United States Attorney brings them here in order to have imposed the excessive sentences that are now required by the mandatory-minimum sentencing statutes and the Federal Sentencing Guidelines.

S.B.: Is this happening in other District Courts around the country?

L.F.O.: I think not as grossly as here; that is, I think that the dockets of other Federal District Courts are not saturated with what are basically street crimes, as ours is. I think they have more serious, heavy drug cases. There have been a few here, but the run-of-the-mine are small crack cases.

S.B.: What is the difference in this district and others? Is it the nature of the U. S. Attorney's Office?

L.F.O.: Well, the biggest difference is that the United States Attorney here is also the prosecuting attorney in the local court, and he has the call. He can bring any criminal case here that is actionable under federal law; whereas, in the 50 states there is a state prosecuting apparatus to which the local police bring their cases. Here, the cases are brought by the local police to the United States Attorney, and then he makes the choice. We never see a federal law enforcement officer in these drug cases.

They are always officers from the Metropolitan Police Department, except that they bring in chemists from the Drug Enforcement Administration to prove that the substance is crack.

S.B.: If you could change the system, how would you change it?

L.F.O.: Oh, I would change it very drastically. I would relegate local drug crimes to the local courts. I would eliminate mandatory-minimum sentences for drug cases. I would eliminate the guideline minimums for drug cases. I would greatly enhance the facilities in prisons and outpatient for the treatment of addicts, and I would authorize what we used to call split sentences, namely: imposing a sentence of incarceration and suspending a portion of it on condition that, while in prison, the defendant effectively uses the opportunity for treatment and is committed to remaining drug-free and in treatment for a long period of probation or supervised release.

S.B.: Do we not have such a program, or is it that we just don't have enough treatment centers?

L.F.O.: We don't have enough treatment centers, and we are not authorized to give split sentences. The guidelines and the statutes require these sentences to be served without parole.

S.B.: Do you think any of your proposals might come about?

L.F.O.: I have no idea.

S.B.: Would you have accepted the job today if it were portrayed to you this way?

L.F.O.: No.

S.B.: Do you think that is affecting other people's willingness to take this job?

L.F.O.: I don't know if anyone is unwilling to take it. I think that there is a great attraction to the job here for the people in the Superior Court. I think, you know, the question is: Compared to what? We have here a very congenial group of judges who are remarkably collegial on the District Court. It wasn't this way when I came here, but it is now, and that's the other side of it.

I find that across the political spectrum, across the age spectrum, and across the social spectrum, this is a very congenial group. Now, it may be that it's sort of like being in a foxhole together.

Excuse me. I'm going to have to take a verdict in a criminal case.

(Brief recess.)

L.F.O.: We have been interrupted by the return of a verdict. Professor Bloch went into the courtroom and observed what is the

grist for our mill right now. A young black man was tried for possession of a large quantity, more than 50 grams, of crack/cocaine. The police broke into an apartment occupied by him at 3:00 o'clock in the morning, while he was making love to his girlfriend. He was arrested in the altogether. The tryst was on the living-room couch.

Drugs were found on the kitchen table and in a kitchen cabinet, and under the bed in the bedroom were two guns. The jury found the defendant guilty of the possession of the drugs, which would have been more or less right before his eyes in the kitchen, but found him not guilty of possession of the guns.

He's probably exposed to a sentence of ten years. If the jury had found him guilty of the gun offense, his sentence would have been 20 years. The young man is 22-years-old. When the jury announced its verdict, his head went down as if he were in an electric chair.

Now, I must say two things about this: If I hadn't spent four-and-a-half years in the Army, I could not do this kind of work, and the misuse of my training and experience on day after day of this is inappropriate. So let's talk about something else.

S.B.: It was not his apartment? Is that why --

L.F.O.: Well, it was complicated. The apartment was rented

by a school teacher who testified that she let him "oversee" the apartment, but he paid part of her rent. Some of his papers were found there, and, of course, he had a key to the apartment. There was a conflict in the testimony as to whether anybody else had a key.

There was also testimony that he had another residence with his father. His father got on the stand and testified that he didn't allow any sex in his house, so that's where that was, in terms of the testimony.

S.B.: Well, it was a graphic illustration of everything that you --

L.F.O.: Did you find that jolting?

S.B.: I did. It was very moving; I was very troubled. He looked like the sort of person who could be rehabilitated, assuming that --

L.F.O.: Yes, but that's not permitted. The pain that he showed just from being told what lies ahead of him indicates to me, as it has over and over again in the past, that there are people out there who are -- obviously, there are some insensitive killers, but there are also some very sensitive people who could, and would, respond to an appropriate prison environment and be restored to a useful life. We have just imposed a life sentence on this man.

It is unlikely that he will survive ten years in prison.

S.B.: Really?

L.F.O.: In my view.

S.B.: Do you think he will die or just come out more --

L.F.O.: Well, what survives won't be worth having. He'll either die as a result of something that happens to him in prison, or he will come out a hardened criminal.

S.B.: It's hard to go on from that.

L.F.O.: Right.

S.B.: What is your view of the jury system?

L.F.O.: I'm very impressed with the jury system. I am. Of course, I come by that from my experience with Justice Black, who worshipped the jury system. If he had any God in heaven, it was a jury. I have found them to be incredibly astute and careful, as I said just now to the jury that I excused. It consisted of 11 blacks and one white. Two of the jurors were black males. Confronting drugs and crime in a way that we don't, they know what it is doing to their lives and their children's lives, but they also are sensitive to the cruelties in the system.

They deliberated on this case from 10:00 o'clock yesterday until nearly 11:00 o'clock today. The indictment had three counts. They found the defendant guilty on two counts and

not guilty on one count. They asked for instructions on the definition of "possession with intent to distribute" three times. It is a very tricky subject. They have to learn the meaning of the term "constructive possession" and distinguish it from "actual possession."

This is a particular case; but, generally across the board, when you take six or 12 people out of their ordinary lives, many of which are probably humdrum and boring, if not outright unpleasant, and put them in a serious environment, they respond. We tell them that they are judges, and that they are charged with a grave public responsibility. They listen; they hear you; they hear the judge. You can see them making their judgments of the lawyers and the witnesses, and I don't think they have made what I would consider a mistake in five percent of the cases that I have had over 15 years, civil and criminal.

Sometimes they go a little wild in calculating damages, and I did have the unusual situation fairly recently, when I was hearing a case with an advisory jury, where we disagreed. Under the new Civil Rights Act, there is ambiguity as to whether a claim for damages in violation of Title VII that occurred before the effective date of this act should be tried to a court or to a jury. In the one civil case that I tried this year that I recall,

I treated it as a bench trial, but convened an advisory jury. I made findings, and the jury rendered a verdict. I made findings in favor of the defendant; they rendered a verdict for the plaintiff.

I'm a little leery about how the jury system is going to play out as a District of Columbia jury becomes the Office of Personnel Management for the Federal Government. I'm not sure whether people's experiences in the work place will be translated into something of a loose cannon on a jury. But, apart from that and the calculation of damages, and without considering the complex, commercial types of cases that we don't have, I have been thoroughly and convincingly confirmed in my original assumption that, as Justice Black said, jury trials and the jury system are one of the real cornerstones of liberty.

S.B.: There were a few times that I was on jury duty. I never got to sit, but I was very impressed by how seriously everyone takes that responsibility.

L.F.O.: And there is a chemistry about leaving the decision to a group who will discuss it and thrash it out and knock each other around without any rules; that is, without any rules in terms of how they go about doing what they are doing. It is somewhat similar to the way countries make sausages and laws; you don't

really want to know. But in the case of juries, in my view, it comes out better than sausages and laws.

S.B.: Do you think the jury is ever afraid of retaliation from the defendants?

L.F.O.: Well, I haven't seen that. I have interrogated a jury, again this year. I had a jury which -- by the way, we have had in this district, as a result of the misguided policies of the United States Attorney, a really dramatic number of acquittals. In 1992, 44 percent of the criminal cases that went to trial in this district ended in acquittal. That is a percentage of all of those that went to trial. As I recall, about 50 percent of the cases indicted ended in guilty pleas; so that would mean that 22 percent of the total number of cases indicted resulted in acquittals, which is still an extraordinary number of acquittals.

I have a criminal case that is set for a retrial next week. Originally, there were two defendants. One was acquitted by the previous jury, and, with respect to the other, they were unable to reach a verdict. It is that defendant who is being retried.

After the trial, I asked the jury whether they wanted to speak to me about the case, and they said they did. So I took them into the jury room with the Assistant United States Attorney

and the defense counsel, where several of them -- not just the foreman -- explained to me and to counsel that the government simply did not come forward with sufficient proof to make them feel comfortable about taking away a big part of somebody's life for what the government said they did. If the defendants had done what the government alleged, they should have gone to jail, but the government didn't prove it.

The Assistant United States Attorney -- I think he meant it to be off the record, but I'm putting this down for history, and I'm certainly not going to identify him -- said to the group that they have to realize that in this city at this time the Chief of Police isn't interested in making cases. He's only interested in making arrests, and the U.S. Attorney's office has to take what he gives them and do the best they can with it.

That, of course, completely ignores the prosecutor's responsibility to exercise some discretion and decide not to bring a case that he doesn't think he can win. I was just outraged; I still am.

S.B.: Did you tell him?

L.F.O.: No.

S.B.: Really?

L.F.O.: No.

S.B.: Was it a young assistant? Was he educable? That is what I meant.

L.F.O.: No, that's not the way to handle it, not by picking on a young Assistant U. S. Attorney.

S.B.: In your years on the bench, what have been some of your favorite cases, or some of your most difficult cases?

L.F.O.: Well, let's see, favorite cases. I enjoyed very much working on the case involving the Japanese Americans who had been interned during World War II, Hohri v. United States. It was a claim on behalf of all of them, and it went all the way to the Supreme Court.

We were furnished with extensive documentation of the history of the decision-making back in 1941 under the leadership of the Commanding General on the West Coast, President Roosevelt, and the Department of Justice, the involvement of all of them. That included, from the perspective of the Department of Justice, the litigation of the Korematsu case in the Supreme Court.

I wrote a thorough factual, historical summary of the situation, or at least I thought I did, ending with the conclusion that the claim was not actionable under the Federal Tort Claims Act or the Constitution, but that it was a subject Congress should address.

The Court of Appeals reversed me and held that it was actionable, but the Supreme Court vacated the judgment of the Court of Appeals on the ground that this was a contract-type claim that was not reviewable in the Circuit Court of Appeals, but should have gone to the Federal Circuit. The Federal Circuit affirmed in a per curiam opinion, and then Congress, as you know, passed the statute. That was a very rewarding thing.

There have been some interesting First Amendment cases. For example, I've had a number of criminal cases, misdemeanor cases, involving the anti-nuclear street people who lived in Lafayette Park, a very appealing group. You've seen those people in the park. For a while, the White House and the Park Police just made war on them by hassling and harassing them. We kept trying to work out a modus vivendi for them to conduct their activities without violating the statute that proscribes camping in Lafayette Park.

In one of the cases the defendant was a woman, Ellen Thomas, who had been employed in a relatively high-level staff position by a public-interest environmental outfit here in town. She fell in love with, and eventually married, the leader of this anti-nuclear group, a guy who was living in the park. He was an educated man who had just taken to the streets, carrying signs

about atom bombs and things like that.

Well, apparently, one of their fellow demonstrators was arrested and detained at St. Elizabeths. They were holding him as mentally ill. This young woman, who had just become romantically involved with the leader of the group, was trying to get a lawyer to help their friend and hadn't been successful. She thought some attention from the media might help her efforts, so she climbed a tree, swung a hammock, and went on a fasting strike. After about a week the Park Police came along with a cherry-picker, took her out of there, and charged her with damaging a tree in a national park. I can't remember how it came out, but that was very interesting.

I also had the Kurtz v. Baker case involving various questions concerning the prayer in Congress. Among the issues was whether the invocation that has been part of the every-day routine up there was a violation of the Establishment Clause.

S.B.: Was that the case that went to the Supreme Court as Marsh?

L.F.O.: No, this was long after that. I don't think it went to the Supreme Court. I decided -- and I'm sure I was affirmed -- that this was something that was within the power of the rules of the House to determine, and I approved it.

I had another case where I didn't approve something they did and made them change it. I can't remember what that was.

I also had the case involving the impeachment of Judge Nixon of Mississippi, which is still pending. The issue before me was whether the procedure of the Senate for having the evidentiary hearing on an impeachment conducted by a committee, with the vote conducted on a record and oral argument, complied with the Constitution.

I wrote an opinion that made all of the arguments against it, but then said that, again, this was a matter within the province of the Senate to determine by a rule. Now that issue is in the Supreme Court.

The case that has, if any case has, dominated my career here was the one involving the crash of an Air Force C5A cargo plane manufactured by Lockheed. I inherited it from my predecessor. At the time I was appointed, I had heard that the judges over here were aware of the fact that my nomination was a possibility, or was in the works, and whatnot; and that they had put a lot of pressure on Griffin Bell to speed it up. Although I never said this to any of them, I often thought that they wanted me over here as quickly as possible because Judge Jones was sick; this case was festering; and it was a beast.

S.B.: Which one was that?

L.F.O.: This was the case involving the claim on behalf of a class of Vietnamese orphans who were allegedly injured and the estates of deceased Vietnamese orphans who were killed when an Air Force C5A cargo plane crashed near Saigon about a week before the war ended. Do you know anything about it?

S.B.: I remember it now.

L.F.O.: The plane had taken off from Saigon with 150 infants strapped two to a seat in the 75-seat troop compartment, and another hundred or so were in the cargo deck on pallets up against the walls of the plane. Some of them had seatbelts; some did not. There were also adult escorts in both the troop compartment and the cargo deck. When the plane reached the altitude of about 20,000 feet, the rear cargo door blew off and severed all of the controls to the rear rudder and the ailerons. The pilot did a remarkable job of steering the plane with the wing flaps and throttling to almost a mile from the airfield before crash-landing.

S.B.: Why was it so difficult?

L.F.O.: Well, it was complicated by its nature. It was a very difficult case, particularly the claims on behalf of the deceased infants. They were orphans less than a year old who were en route to the United States for adoption, but had not been

adopted.

S.B.: Who was suing?

L.F.O.: Well, the suit was brought by an outfit called the Friends for All Children, which had operated an orphanage in Vietnam. The officers and personnel of that organization were quite a noble bunch of people, by the way. Of course, their legal status with respect to the deceased orphans, for whom they had not been appointed guardians anywhere, was very fuzzy; and, as difficult as that aspect was, the survivors had no clear signs or symptoms of injury. They had been in the troop compartment of this huge C5A when it belly-landed, and the crash had just torn up the lower cargo deck of the plane. According to the defendants, Lockheed and the Air Force, as the plane skidded around on the ground, the troop compartment sort of floated away from the cargo deck, as it was designed to do.

Then there were all kinds of arguments about the level of the G-forces during the crash and the damage, if any, that these children in the troop compartment suffered. We had a battle of psychologists and psychiatrists over the diagnosis of, and prognosis for, each of the surviving orphans. The plaintiffs' experts came up with the diagnosis of minimal brain dysfunction, which was just garbage, I'm sure, to a hard-headed sort of person,

and the defendants defended these cases as if they were involved in the Battle of the Marne.

S.B.: Were they accused of negligence or faulty design?

L.F.O.: Well, it was a design-defect charge. The defendants agreed not to contest liability, and, as part of the quid pro quo, the plaintiffs dropped their claim for punitive damages.

Able counsel representing the estates of the deceased infants settled their claims rather early on with the defendants, who then went on to dispute the damages claimed by the orphans who survived the crash. The defendants based their entire defense on the contention that these infants suffered no damages. Well, this thing went on for eight or nine years.

An anecdote: The defense lawyers did not endear themselves. My law clerk at the time went out to lunch one rainy, cold day, when it was hovering between freezing and not freezing. When he came back after lunch, he said to me rather sheepishly, "Judge, I let you down."

I asked, "What do you mean, you let me down?"

He replied, "I was driving down Pennsylvania Avenue a few minutes ago. Mr. So-and-so (one of the defense lawyers) jumped out in front of me, and I put on the brakes."

S.B.: What was the final verdict?

L.F.O.: Well, several of them were tried as sort of bellwether cases in order to establish a basis for settlement and a precedent for simplified trials of those that did not settle. Instead of going along with that and using the jury as an advisory jury after there were three verdicts against them that were fairly large, the defendants appealed, as was their right. On May 16, 1981, "a day that will live in infamy," the Court of Appeals determined that I had admitted an Exhibit 109, which was prejudicial to the defense to the point of reversible error and reversed those cases.

Now, there were 150 cases, and all of them had to be tried individually. My colleagues, each of them, had taken on five or ten and were in the process of trying them within the parameters of a comprehensive pretrial order that I had entered. However, the Court of Appeals reversed the bellwether decisions, and the participating judges had to start all of the cases over again.

S.B.: Eventually, the children, I take it, got the money?

L.F.O.: Well, I went to some considerable trouble to resolve that matter. The settlements were multi-million-dollar things. I mean megabucks, and, incidentally, we had a terrible time settling the fees. The attorneys representing the surviving orphans had not

kept their time charges in any businesslike way and had not kept good track of their expenses. I had to get two volunteer lawyers, one from Arnold and Porter and one from another senior firm, to be Special Masters and sort out the fee claim.

We also created two trusts for the surviving children: one for those who lived in the United States and one for those who lived in Europe. There were several score who had been adopted in Europe. There wasn't enough money to give everybody a pro-rata share and take care of the ones who were really sick, and that was the terrible difficulty of the case. These trusts were designed to permit the respective trustees to select out the children who, over time, showed that these theoretical symptoms were real symptoms, and there weren't too many of them.

At the time of the trial, these children were maybe four or five years old, and the medical testimony was that these symptoms -- a lot of it is hyperactivity -- don't mature in terms of problems with behavioral control and other, observable difficulties until early adolescence, and, therefore, the idea of the trusts. Now, there were some predictions as to how many of the children would eventually require treatment, and the reason for creating the trusts was to keep the funds together, invest them -- and, of course, at the time there was a big boom in the stock

market; they did very well -- and then to disburse the funds when the facts and medical conditions had clarified.

The trust for the survivors in the United States has been terminated now. After the children were about ten years old, an amount of money was fixed on the six or eight -- no, there weren't that many -- on the two or three who really needed long-term care, and the rest was distributed per capita.

The trust for the foreign children is still in place. It has $2 million to $3 million in it, and the trustee pays out amounts on request from these foreign adoptive parents for special schooling and things like that. There is, as I recall, one foreign child who requires serious attention and is getting that.

S.B.: Were you involved in the cases of Operation Rescue? Did you have those in your court?

L.F.O.: Oh, yes, the one in this district is my case.

S.B.: What was your view on that one?

L.F.O.: Well, that's still in process. I entered the injunction here to enjoin the defendants from physically blocking in this particular jurisdiction, as I put it, the movement in interstate commerce of people coming from Virginia and Maryland into the District of Columbia for medical services. That matter is on appeal; my decision is on appeal; and, of course, the decision

of the District Judge in Virginia is in the Supreme Court.

All three of those cases, that is, the Maryland case, the Virginia case, and the case in the District, were originally filed with me; and I dismissed without prejudice the claims on account of threatened activities in Maryland and Virginia. So they proceeded independently.

S.B.: And now you're waiting for the Supreme Court?

L.F.O.: Well, literally, for the Court of Appeals, but I'm sure the answer will come from the Supreme Court.

S.B.: Can you tell us something about how you prepare for a trial and how you use your clerk? Is there some sort of a general way in which you decide cases?

L.F.O.: I explain this, or at least part of it, to applicants for a clerkship every year. I rely very heavily on my clerks. When a case comes in, the files are distributed to the two clerks on an odd/even basis. One of the clerks is given the cases with even numbers; and the other, the cases with odd numbers. I do look at every complaint that comes in before it is distributed, primarily to identify possible disqualifications; for example, all Wilmer, Cutler cases and, obviously, those involving companies in which my wife and I have stock. I disqualified myself the other day in a case brought, I believe, by the Defenders of Wildlife with

respect to the wolves in Yellowstone, because my wife is a contributor to, and very active in, that particular issue, and we were just about to go to Yellowstone.

When the answer is filed, there is an automated process by which we set a status call, and at the status call I schedule the proceeding and enter what I call a pretrial order. That order schedules the discovery, including the cut-off date for discovery; a briefing schedule, if there are to be dispositive motions; and I fix a trial date. The pretrial order sets the schedule within which the lawyers do their work.

When a motion comes in -- now, this is on the civil side -- the clerks give me some kind of a memo, and they often don't have much time to do it. Then, on the weekend before the argument, or the night before the argument, or sometimes on the morning of the argument, I get to read their memo, whatever it is, and I read through the briefs. After I've heard the argument, ideally, I come back here to my chambers and, with the clerk present, either dictate to my secretary or block out to the clerk, if my secretary is tied up, my first impression of what we ought to do and why.

These drafts are not very polished. I take some of them home on weekends and work on them. The clerks edit my drafts

very carefully. They also write drafts, and I edit their drafts very carefully. It becomes really quite a collegial enterprise between the clerks and myself. In some years I have more rapport with them and probably do better work than I do in other years when they are really not quite up to the same speed or we just don't resonate in the same way.

Then, when the case gets ready for trial, if it does, I make a big effort to try to interest the parties in our mediation process, which has been very helpful. It has been a lifesaver for us, with our criminal docket being what it is. I try to encourage and persuade them to settle. Of course, there are limits to what a judge can do with respect to settlement when he is actually going to try the case. Title VII cases almost never settle, particularly with the emotions involved.

S.B.: Do they mediate some of them?

L.F.O.: No. In a bench trial where I have to make findings of fact and the matter is relatively straightforward or simple, I might make them from the bench. If the issues are more complex, I often ask the parties, as I did, for instance, in Operation Rescue, to submit proposed findings. Then I will either go through those and block out my own or ask the clerk to do a draft.

There is really less of a role for the clerk in a

criminal case. In the drug cases, really, I can recite the instructions from memory, but the clerks do assist me. Each party is supposed to give me proposed instructions and questions for voir dire, and the clerks put together what is called a trial notebook. In criminal cases they just give me a list and make a smorgasbord of the proposed voir dire questions. They give me a notebook so that I just have a trot.

I like to write, but I don't do as much as I would like to do, or as I used to do. I find that I'm not fit for very much after a day of these trials. I used to be able to work at night, and I think I still would, if I weren't so consumed as I am, and physically pinned down and drained, by the kinds of things you just saw.

S.B.: It's the emotional drain, as well as the physical?

L.F.O.: Well, it's physical, also. I mean just to have to be there and worry about whether the defendant shows up and the lawyers show up and whether the jurors are comfortable and whether somebody is sick. It's not the highest and best use of the assets.

S.B.: Is the court overloaded, the docket, in any way apart from the imbalance of criminal cases?

L.F.O.: Oh, we don't do many things other than criminal cases, or almost never.

S.B.: What's happening with the civil cases? Where are they?

L.F.O.: You push them along. I have a civil case involving a claim of police brutality. It was scheduled for trial on March 31st, but I have since had to set a criminal trial on that date. Yesterday, I ruled on the suppression motion in that criminal case, and the only trial date that I had open for it between now and the end of April, under the Speedy Trial Act, was March 31st.

So I had the people involved in the civil case come in this morning, and I went through a pretrial conference with them. They are coming back at 2:30, at which time I'm going to tell them that I can't try their case. Meanwhile, I have urged them to settle. I said, "There is a very serious risk that I won't be able to try your case on March 31st." I didn't want to say right there that I wouldn't, because you never know what will happen. But I asked them to consider whether they would submit to mediation, or whether they would agree to have the case tried to a Magistrate, or whether they would settle it.

This is a case that had been originally prosecuted by the plaintiff pro se, and, as a pro se, he attempted mediation. At that time it did not work out. Well, he has a lawyer now, and I thought that, possibly with the lawyer in the mediation process, it might be more effective.

S.B.: What do you mean: you won't try it?

L.F.O.: I mean that I won't try it on the 31st.

S.B.: Oh, I see. You won't try it on the 31st.

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

S.B.: But, so far, all you've told them is that you may not be able to try it, and they would have to wait for your next available date?

L.F.O.: There is always a possibility that the criminal case scheduled for the 31st would end in a plea before it starts, but we're just sort of juggling the civil docket, and the lawyers are suffering. There is no question about that. I'm sure the bar must be up in arms about this.

S.B.: And the only solution that you see is for Congress to take away the --

L.F.O.: The mandatory-minimum sentences.

S.B.: Or to remove the discretion of the U. S. Attorney to bring the cases?

L.F.O.: Well, that would be two things.

S.B.: Right.

L.F.O.: But if they remove the mandatory-minimum sentences, there wouldn't be any incentive for the United States Attorney to bring them over here. He brings them over here because he thinks

he can put these people away for a longer period of time. For instance, if he tried this young man in the Superior Court, he would probably get a year. Now, he's going to get ten years.

S.B.: How do you feel about getting reversed? Do you think about it ahead of time? How do you feel when it happens?

L.F.O.: Oh, I'm very conscious of the risk. I used to be more concerned about it than I am now. They have often identified mistakes that I've made. I've seen, from what they said about what I did, where I went wrong. There are also a number of cases where I know that the reversal was not correct, and, as a fiduciary of the judicial process -- not personally -- I cringe.

S.B.: Is there anything you can do about it?

L.F.O.: No. There was a series of cases involving the so-called interdiction squad of the Metropolitan Police Department. The interdiction squad, which may or may not still be extant, patrolled Union Station and the bus station, purporting to be able to spot couriers, or so-called "mules," a term of art in the drug trade.

They developed a rather diabolical technique for making an arrest without either a warrant or probable cause. Two of them would approach a target, one overtly and the other hovering nearby, both in plain clothes, and the former would start a

conversation with the targeted individual:

"Where are you coming from?"

"I'm coming from New York."

"Can I see your ticket?"

The person would hand over the ticket.

"Where did you buy this? Did you pay cash for it?"

There is a litany that they go through in a very calm way, and at some point they ask:

"Do you have any drugs? Drugs are a big problem in this town now, and we're a drug-interdiction squad, and we're looking for drugs. Do you have any?"

"No."

"Do you mind if I look in your bag?"

A surprising number of these people, the ones they bring in here, agree to that, or at least the police say they agree to it. Then they search the bag and find the drugs, and the police officer behind the target, who has been there all the time, comes up and clamps it, and they take him off.

I have taken the position that in those circumstances the particular people they pick on, knowing that the undercover guy is a cop and, therefore, armed -- and he later identifies himself as a cop -- have no idea that they are free to leave.

The Court of Appeals has taken the position that:

If within a 360-degree circle of the target there is a route by which that individual could leave, and the officer doesn't display any weapon so that the individual does not know that he is armed (which presupposes that there is somebody out there who doesn't know that an undercover officer carries a gun, particularly somebody from the street), and the officer speaks in a calm, unthreatening tone of voice -- and he will invariably testify that he did -- the conversation leading to the request to search is not a Terry stop;

It's not an arrest; and,

When the person agrees, or the officer testifies that he agreed, to the opening of the bag, that is consent. Therefore, there is no Fourth Amendment violation.

Gesell and Sporkin have written opinions in which they expressed their dismay at the erosion of Fourth Amendment rights that was being countenanced in these cases. About a year ago, the Court of Appeals reversed them in a single opinion. Now, these were distinctive cases; as I remember, the officer stood in the aisle of the bus in one of them. Do you know the case?

S.B.: That was Bostick in the Supreme Court?

L.F.O.: Well, that was the ultimate denouement, but even that was different. I can't remember the distinction now, but it is distinguishable. At any rate, each of them, Sporkin and Gesell, separately reminded the reader of Samuel Adams and writs of assistance and totalitarian abuse of searches, and a Court of Appeals judge reversed them and made fun of their failure to discriminate between that major tyranny and what the appellate judge viewed as a petty thing that Sporkin and Gesell were blowing all out of proportion by invoking Adams and the writs of assistance. I agree with Sporkin and Gesell that ancient and honorable Fourth Amendment rights are being trampled on in this War on Drugs.

That reversal happened at about the time I had one of these cases, and I wrote what would have been a dissenting opinion. I stated in my opinion that if I were free to write the way I wanted, I would, of course, have found that these street people, confronted in a strange town by a police officer whom they know is armed and having seen people beaten up by the police in certain circumstances, do not have the option that the Court of Appeals found as a fact was available to them: refusing to consent and walking away.

I further wrote that I couldn't refrain from expressing my dismay over the fact that the Court of Appeals would disparage the expression of concern by Judges Gesell and Sporkin, both of whom were experienced in law enforcement and in life in a way that qualified them to make these kinds of judgments. Then I put in a footnote with a little precis of Sporkin's biography as head of enforcement at SEC and Chief Counsel at the CIA and Gesell's experience as the Assistant Chief Counsel of the Pearl Harbor investigation and an SEC investigator and antitrust trial lawyer.

I heard that my opinion was circulated by one of the judges up there to the rest of them in the course of the dispute or the debate about this issue, but that is the nearest I have come to it since.

S.B.: Who was the Court of Appeals judge who wrote the opinion chastising Gesell and Sporkin?

L.F.O.: It was Judge Buckley, a public matter.[1]

S.B.: That's right. That's why I felt comfortable asking. The Court of Appeals has obviously changed over the years. How has

[1]Gentleman that he is, when Judge Buckley learned of my dismay at his disparagement of Judges Gesell and Sporkin, he wrote a most gracious letter of "sincere apology." (Letter from Buckley to Gesell, dated March 11, 1991.)

that affected you, or let me first ask: Has it affected you?

L.F.O.: Yes. First of all, personally, Skelly Wright and Carl McGowan, in particular, were close friends. I used to have lunch with them several times a week, and their wives and my wife were social friends. I've known Skelly Wright, as I think I told you, since the first time I appeared in the District Court in New Orleans. He was a very close friend of Justice Black. He was part of Black's family of clerks and always showed up at the parties for the clerks.

Carl was a good friend long before I came up here, and I had been very involved with Harold Leventhal. I was in a case with him in the 1940s and had known him ever since. As a matter of fact, now that I think about it, Leventhal was general counsel of the Democratic National Committee during the 1960 campaign, and I made a contribution through him. When I was appointed to the Federal Bench, Harold called me up and said, "I just have one piece of advice for you. When you get your robe, make sure they put pockets in it."

I had that kind of a relationship with the three of them. I sat with them; I could talk to them; and I felt like I was part of the whole courthouse. I don't now, and that's the difference.

S.B.: Is it principally that these individuals who were your friends are no longer there, or is it because the Court has --

L.F.O.: Well, it's certainly both.

S.B.: (Continuing) -- changed?

L.F.O.: I mean you cannot distinguish the two: that the people who are there are not my friends, and I do disagree with them about a lot of things. Right deep down, I disagree.

S.B.: Are you friends with the more liberal members?

L.F.O.: Well, I am friends with some who are not so liberal. I've known Pat Wald a long, long time; and I've known her husband, particularly. I'm friendly with Dave Sentelle, and I like Jim Buckley. He and I worked together on a proposal to ameliorate the law-clerk-hiring situation. I don't know if I have discussed that with you.

S.B.: No. I'd like to hear your views on that. Is it a question of the acceleration of the dates?

L.F.O.: My former law clerk and I have an article coming out in the next issue of the Yale Law Journal on the question of law-clerk hiring, which is a response to Judge Kozinski. We are advocating the adoption by the judiciary of the system used by hospitals to recruit interns and residents, the matching system.

S.B.: How would that work?

L.F.O.: Well, I think quite simply, in theory and in practice. In practice, the interview process would proceed as it does, hopefully, in the fall of the third year, instead of the fall of --

S.B.: Kindergarten.

L.F.O.: (Continuing) -- the second year. Several of the judges in this circuit hired their 1993 clerks in December of 1991.

S.B.: I know. I was appalled at that.

L.F.O.: The entire circuit hired its clerks by February 18, 1992, for 1994. I hired mine before the end of January, for 1994.

S.B.: Oh, you did, too? It wasn't just the appellate level?

L.F.O.: No. I think that I've been competitive with them in hiring. I figured I might as well play as if I were in the big leagues. In any event, the matching system contemplates that the interview season, which could be infinite, would be scheduled as judges and potential clerks wished and, hopefully, to some degree, during the summer. At that time, at least in Washington, many of the potential clerks are here in jobs in any event so that their travel plans can be made consistent with their scholastic obligations. At the end of the interview season, the applicants would list the judges by whom they have been interviewed in order

of preference.

S.B.: All of them, no matter --

L.F.O.: Well, they would list in order of preference the judges that they would prefer to clerk for, and the judges would list the applicants in order of preference. These two rank-order lists would be filed in a central place, and at a point in time they would be matched. If a judge picked a particular applicant as his or her No. 1 choice and the applicant selected that judge as No. 1, that's a match. Then the matching system would send out letters to the clerks and judges announcing whom they have hired, just as the universities send out letters.

We've consulted with the man who runs the match for the Canadian Medical Society and the Toronto Bar Association, which has an apprentice system operating on a matching basis. He has a computer that is programmed to do this. Our article reflects his work, and, of course, we have given him a lot of credit for the help he has given us. The complications -- without going into them -- are reconcilable by hand. It is just that the computer is faster.

S.B.: Would the judge become aware of what the clerk's preferences had been? For example, if you find that you're going to have John Jones and John Jones is high on your list, would there

be some way you would know that John Jones actually had you down as eleventh on his list?

S.B.: Well, that's obviously going to happen in some cases, but it's not going to happen in some, too.

S.B.: But would you know it?

L.F.O.: Well, it depends. If you call up a kid and ask him if he ranked you No. 1, I don't think he's going to lie to you. Now, a judge might.

S.B.: You mean you would ask him afterwards? When would you ask him?

L.F.O.: Well, you would ask before the lists were filed, if you wanted to cheat.

S.B.: Right.

L.F.O.: One would call the other and say, "Look, I'm about to file my rank-order list. If you put me down as No. 1, I will put you down as No. 1."

S.B.: That was my other question: How often do you think that would happen?

L.F.O.: I have no idea. We would have to try it and see.

S.B.: But you would view that as undermining the system?

L.F.O.: Well, that is not the way it is supposed to work. Now, whether it would work as well that way, I don't know.

S.B.: Assume that that didn't happen: that you don't consult. Then, when you learn who your clerk will be, is there any way for you to determine where you stood on that clerk's list? That would worry me. I would hope that would not happen.

L.F.O.: We don't know now. When we call them up and make an offer, they may have two in the wings, and the poor kid has to decide whether he wants to take the offer in hand. Now they'll ask us to give them some time to respond to the offer. I do, but other judges don't.

S.B.: How much time do you usually give them?

L.F.O.: This year it was January. I couldn't be in any hurry. I think I gave one kid two weeks, or I didn't give him any specific time. I just asked him when he could let me know, and he said in two weeks. I was really quite relaxed about this year, partly because I am seriously considering, and am probably on the verge of taking, senior status, so I wasn't too uptight about it. Also, I realized that I probably have 400 applicants, and if a clerk doesn't show up between now and whenever it is, June of 1993, I ought to be able to find somebody willing to come in here.

S.B.: You say that you might take senior status. What does that entail? What would that be?

L.F.O.: Well, you know what "senior status" is. You make

your place available for another appointee, but you keep your commission and your privilege to keep your chambers and your staff so long as you do 25 percent of the work of an active judge.

S.B.: And you keep two clerks?

L.F.O.: Yes, I think you can. At least that is the current situation. Now, you never can tell when the Congress will change that.

S.B.: So it wouldn't make a big change in your life. You would just have fewer cases.

L.F.O.: That's exactly right. My idea is to take 50 percent of the case load that I have now. I signed up to do that course at Georgetown with the assumption that at that time I would be on senior status. Therefore, I would have the time, and I could see whether I can occupy myself at this stage in my life with something self-started, as distinguished from just taking what is thrown at me.

S.B.: And you wouldn't have to do a lot of criminal cases that are all the same. Now, who are some of the best attorneys that have appeared before you?

L.F.O.: Well, that's hard. There's a young man who is trying these criminal cases right now who is the only pleasure in the business. You saw him in the courtroom today, the prosecutor, a

Norwegian fellow by the name of Per Ramfjord. He is a very able young man who prepares assiduously, is very attentive to details, and straight as an arrow. He never cuts corners ever, and he has never disappointed me.

Now, he has won some cases that I would rather he lost because of the unfortunate circumstances of the defendants, but, on cross-examination of these poor street people who come in with an alibi, he's absolutely brilliant. He just tears their alibi to ribbons. You really ought to see him on cross-examination. I guess he's as good as anybody I've had in here.

It's awfully hard to delineate. I remember Plato Cacheris in a case that he did very well. Stan Mortensen defended a case years ago extremely well. He's at Miller, Cassidy.

S.B.: How would you grade the quality of the bar, criminal and civil?

L.F.O.: They're not in the same league with my law firm.

S.B.: Both civil and criminal?

L.F.O.: It is just a different order of magnitude in terms of facilities, intellectual power, spoken and written language, ideas and imagination, care and preparation. There is just all the difference in the world. I think of the Cravath lawyers with whom I worked on those IBM cases. Now, I forget the difference from

time to time, but it's clear. It's clear in my head.

S.B.: Do you see a change, either for the better or the worse, since you got on the bench in 1977?

L.F.O.: Oh, I think there have always been several different spheres of legal skills, particularly in Washington.

S.B.: And that has not changed, in that people are not getting better or worse?

L.F.O.: For instance, I think that the Wilmer, Cutler people are much better litigators now than they once were because they have had more experience. Wilmer, Cutler was not originally very much on litigation. In my last years there, it clearly was developing, particularly with the addition of Steve Sachs, who is an awesome litigator.

S.B.: Do you think the law schools could do anything to improve what you see?

L.F.O.: Litigation?

S.B.: Yes.

L.F.O.: No. That's a matter of practice. Of course, there are some natural litigators, but, at the same time, I have to say that the kind of litigation that is done at Cravath or the litigation end of Wilmer, Cutler, for example, is not cost-effective. Now, maybe it shouldn't be made available to anybody,

but it couldn't be made available on a mass scale because the cost would be prohibitive.

There ought to be another order of magnitude whereby the efforts of highly skilled people are deployed on a less grand scale to get the same job done and then made generally available. That's an ideal. I haven't seen a case in my court that would support the kind of litigation effort that most major firms undertake in a case similar to what Tom Barr is now doing on antitrust for IBM, or work on the smog case, those kinds of things where you want to dot every "i" and cross every "t" and explore every possible avenue. More effort is expended there than would be justified or necessary. The public doesn't need it and can't afford it.

S.B.: Which judges on the District Court do you think are the most effective in leading the court?

L.F.O.: Well, in leading the court, Aubrey Robinson has been a magnificent leader of the court, first of all, in creating an environment of collegiality; then, by taking care of that environment, the housekeeping, and by running it in a businesslike way so that you know you are in a first-class, can-do outfit. He has created a very fine atmosphere.

S.B.: How long has he been Chief?

L.F.O.: Ten years. He hasn't been the doctrinal leader in any sense. I don't know whether there is one. That is one of the nice things and one of the great attractions about this job. I knocked the job coming in here, but one of the things that attracted me originally is that each of the judges here is in business for himself or herself. That is still an attraction, and it will continue to be the charm of it if I were to take senior status. If you gave this court the job of sitting on panels, the collegiality would go with the wind. At least there are elements here who would not take to a harness like that at all and would be very disruptive.

S.B.: How much sharing of ideas is there? How much do you discuss ideas?

L.F.O.: We have lunch together every day, and I'm due up there now. Most of us show up there now. There was a time when we didn't. That's one of the things that Aubrey has accomplished. He's gotten the dining room policed up and has secured some nice help for us. We have a good time at that table, and there is no rancor at all.

S.B.: Every day or every Friday?

L.F.O.: Well, there's lunch there every day, but not everybody goes every day. Many do, and there is a free-wheeling

discussion. You are not supposed to talk about it, and I won't; but there is a marketplace of ideas and innovation, sort of a show-and-tell. It's a very, very useful and pleasant addition to the life.

S.B.: Are there any women District Judges?

L.F.O.: Oh, yes.

S.B.: Who?

L.F.O.: Joyce Green.

S.B.: Oh, of course. All right.

L.F.O.: Norma Johnson, June Green. June and Joyce come every day.

S.B.: Okay.

L.F.O.: And they civilize it.

S.B.: Were they here when you got here?

L.F.O.: No. Joyce came shortly after I did, but June has been here since -- she was a Johnson appointee. I think we will have to suspend now.

S.B.: All right.

* * * * * * * *

S.B.: This is the fourth interview with Judge Oberdorfer, and it is April 23, 1992.

L.F.O.: Do you remember the cases we talked about last time?

S.B.: I was afraid you were going to ask me that. Let me see if I have that.

L.F.O.: I didn't take notes.

S.B.: You talked about -- this may not be exhaustive, but these are the ones I wrote down. You talked about the Japanese-American interns and their claim; you talked about an Establishment Clause case; the impeachment of Judge Nixon.

L.F.O.: Did I mention the Lockheed case?

S.B.: Yes, we did talk about the Lockheed case.

L.F.O.: All right.

S.B.: That was the crash with the orphans?

L.F.O.: Yes. I would just glance at the list of published opinions that I did. One that is particularly worthy of mention, I believe, is Hobson v. Wilson. It was a suit brought by, among other people, the widow of Mr. Hobson, who was an activist here during the sixties, against the District of Columbia police and the FBI. She and the other plaintiffs sued on account of the harassment they had suffered primarily at the hands of the FBI when they were maintaining demonstrations against the Vietnam War and in favor of civil rights. The record exposed the FBI's so-called COINTEL Program and their activities in connection with that program. It was a very hotly contested civil case.

S.B.: Judge, would you tell us what the COINTEL Program was?

L.F.O.: The COINTEL Program was a covert effort by the FBI to harass -- literally harass -- civil-rights demonstrators and anti-war demonstrators, to publicly embarrass them, and to get them fighting among themselves. Generally, it was a disinformation effort. They called it the Counter-Intelligence Program.

S.B.: Do you know what the acronym stands for?

L.F.O.: I suppose "COINTEL" stands for "counter-intelligence."

I believe the first aspect of it was called the COINTEL Probe Black Nationalists, and it was aimed at people like Stokely Carmichael. It really was diabolical. There is no other way to describe it. The FBI headquarters invited agents in the field to think up tricks that they could play.

One of the things that was particularly revealing in the record was this incident: During the period on which the case focused, there was an effort by the anti-war people to cooperate with the black civil-rights demonstrators, and there was a counter-effort by the FBI to sow seeds of distrust between them. As part of that effort, FBI agents in the field, with the approval of headquarters, forged a leaflet to the leaders of the black group purporting to be from the anti-Vietnam War demonstrators. It was

called the "Give 'em Bananas" leaflet. They put that in the mail, and, of course, it infuriated the blacks.

At the same time, they forged a document purporting to be from the blacks to the white group asking for reparations. Both documents were apocryphal, and, of course, the people involved were furious at each other.

By the way, one of the plaintiffs in the case was Reverend Eaton, who just retired from his pulpit.

S.B.: What was the evidence that this was all forged and apocryphal?

L.F.O.: Well, they testified.

S.B.: The agents testified?

L.F.O.: The agents testified to it, finally, after months of discovery. The young woman who represented the plaintiffs was one of the ablest, most imaginative attorneys that I have seen.

S.B.: Who was it? Do you remember her name?

L.F.O.: Yes, it was Anne Pilsbury from Norway, Maine. She was in a public-interest law firm up there, and she fought these people right down to the bricks. The discovery was resisted on all fronts.

The case ended with sort of a whimper, I'd say, because the Court of Appeals determined that I hadn't calculated

the damages correctly and sent the case back. The damages, as recalculated, were really quite modest.

S.B.: What had they been; do you remember?

L.F.O.: No. Judge Edwards said that the FBI's COINTEL Program sought not only to "neutralize and disrupt" black and anti-war groups separately, but also to exploit any dissension between them in an effort to deter the formation of an alliance. He also discussed the head tax.

On October 16, 1969, a memorandum from the Special Agent in Charge in New York to the FBI Director, referenced to "COINTEL Probe New Left," followed. I quote from it:

"Enclosed are two copies of a suggested leaflet entitled 'Give 'em Bananas,' designed to widen the rift between the New Mobilization Committee to End the War in Vietnam and the Black United Front over the BUF demand that the NMC pay for their planned march on Washington. Enclosed leaflet has been written in the jargon of the New Left, necessitating the use of a certain amount of profanity. It is realized this material is racial in tone, but it is believed this is the one point of vulnerability in the NMC/BUF combination.

"Bureau authority is requested to prepare and mail anonymously the enclosed leaflet to selected individuals active in

NMC and BUF both in the New York and Washington areas."

S.B.: Wow!

L.F.O.: Kind of damaging, to say the least.

S.B.: Is that J. Edgar Hoover's work?

L.F.O.: The case is a teaching tool.

S.B.: For legal principles, you mean, or for outrageous activities by our government?

L.F.O.: For legal principles. This was a breakthrough in 1985.

S.B.: What did they sue under, § 1983?

L.F.O.: § 1983 and § 1985, conspiracy. Originally, the case included the District of Columbia as a defendant. I let the District out. In any event, the documents now speak for themselves, but if I am making a memorial, I'd like to memorialize that.

S.B.: Okay.

L.F.O.: Another case that I want to mention is Nishnic v. Department of Justice, an FOIA suit brought by the children of the fellow who is under a death sentence in Israel for being the Beast of Treblinka, Demjanjuk.

S.B.: Just for the record, what is an FOIA suit?

L.F.O.: A Freedom of Information Act suit.

S.B.: All right.

L.F.O.: I was very concerned in that I felt that the Department of Justice was not being as forthcoming as it might be with their documents and that the United States Government, including the judiciary, should not be placed in the position of hiding whatever was done in that case. So I stopped everything in the office and put both law clerks to work on that case for a couple of months. We went through all of the documents and wrote a very careful opinion, just to see to it that the process was not tainted in any way, and we did require the production of some documents that had not been released.

Another case that I should mention is NOW v. Operation Rescue, which is a recent one. It is currently pending in the Court of Appeals, and the companion case is pending in the Supreme Court. At issue in the case is the effort of the Operation Rescue people to blockade abortion clinics in the District, and I now have the question of whether to impose fines for contempt. I'm awaiting the decision of the Supreme Court to see whether I have jurisdiction over the matter at all.

S.B.: You issued an injunction, and they violated it?

L.F.O.: Yes.

S.B.: What do you think the Supreme Court is going to do?

L.F.O.: I think they're going to reverse me.

S.B.: Really? You think that § 1985 will not provide a cause of action for this?

L.F.O.: If I read the tea leaves correctly, that's certainly a possibility. But who knows?

S.B.: I guess we'll find out in the next month or two.

L.F.O.: The third case that I would like to mention, because it has a good anecdote in it, is styled Ukrainian-American Bar Association v. Shultz. The case started as an emergency matter on a Friday night. The judge to whom the case was assigned had just gone home, and, as the emergency judge, I took over for the weekend at 4:30 p.m., on Friday. In all of my time here, I have had very few emergency matters.

This was an application on behalf of a Russian seaman who jumped ship, a Russian ship, in New Orleans on the eve of the Reykjavik Conference between President Reagan and Gorbachev. The seaman jumped ship and swam ashore in New Orleans, where he was eventually apprehended by the Border Patrol of the Immigration Service and returned to the Russian merchant vessel. After receiving information that the seaman was a Ukrainian who was seeking asylum, the Ukrainian-American Bar Association filed for an injunction to require the government to rescue him from the ship

and produce him for a hearing. However, the captain of the ship would not let him go.

I scheduled a hearing that night because I didn't know where the ship was or where it was going. The petitioners represented that it was headed out to sea. The government lawyers came in with an official from the Immigration Service, I think it was, and a Naval officer. The issue quickly arose as to the location of the ship and where it was headed. The government lawyers asked for a recess so that they could get the information and inform the court. Now, this was getting to be late at night, and, for a substantial period of time -- and my recollection is hours -- the United States was not able to advise the court of the location of a Russian merchant ship in the Mississippi River.

That was really comical. It was just an episode in a strange situation.

I didn't enter the TRO. Thinking back, perhaps I was influenced by representations made to me in chambers -- I hope not in camera, but they may have been -- that interference with this situation might wreck the Reykjavik Conference.

S.B.: The guy was back on the Russian ship; right?

L.F.O.: Yes.

S.B.: What would the TRO have done?

L.F.O.: It would have stopped the ship.

S.B.: And then there would have been a demand that the captain turn over the seaman?

L.F.O.: Well, at least to stop the ship. As it turned out, the ship was not headed down the river; it was headed up the river. I was told -- and I'm sure this wasn't on the record -- that it was headed up the river to a notorious R&R location of the sort one would find only in Louisiana in order to let the Russian sailors have a little fun before they went to sea again.

S.B.: Did you ever find out what happened to that guy? I remember people were worried about that.

L.F.O.: I don't think I did. I don't think anybody ever found out. I think I can imagine what happened to him.

S.B.: All right. Well, there are a few other cases, probably?

L.F.O.: Yes.

S.B.: Although I don't know this for sure, I would think that when the history is put together, there will be a way of listing all of the cases.

L.F.O.: Well, here it is. We can put that in.

S.B.: Let me ask you about some of the outstanding lawyers you've seen and what you think their characteristics are. You've

mentioned a few, and you just mentioned this Anne Pilsbury. Then I remember you talked about one of the prosecutors several interviews ago.

L.F.O.: Yes. His name is Per Ramfjord. By the way, he has been transferred out of here to the Major Crimes unit of the U. S. Attorney's Office. He will be operating, I think, in the Violent Crimes section, probably in the Superior Court.

S.B.: Oh, I see.

L.F.O.: I think I said that I thought he was overqualified for the work he was doing here. Now, in all candor, I haven't had many cases that I would classify as significant. My docket here has really been rather routine, and I haven't had the kinds of cases that attract the first-line lawyers. I don't know why that is. In part, it may be because my wife and I have a very complicated stock portfolio, which would disqualify me in many cases involving major corporations. I'm also disqualified in all cases involving my former law firm.

In any event, to answer your question, I would have difficulty identifying, first of all, the occasions on which lawyers come in here whom I really haven't heard of or had nothing to do with before I went on the bench.

I am reminded of one case, as we talk, involving an

outstanding lawyer who did an outstanding number on me and is one of my best friends, Steve Pollak. Hopefully, I'll find the name of the case while we're riffling through here. It was a case in which Steve, on behalf of a labor union, was challenging the validity of the Department of Labor decision to discontinue enforcing the piecework regulations implementing the Fair Labor Standards Act.

As you probably know, the Fair Labor Standards Act was designed to maintain the minimum wage, and it proscribed the use of piecework labor in knitting and similar industries. I believe the name of the case is International Ladies' Garment Workers' Union v. Donovan. In any event, I decided the case against the union on the grounds that:

This was a law-enforcement regulation adopted by the Department of Labor;

Piecework regulations were not acts of Congress;

The Administration at least stated that the change was made because this piecework regulation was no longer necessary in order to enforce minimum-wage standards; and,

I had no basis for challenging the statement.

I was reversed by the Court of Appeals, but, according to the union and its counsel, the Department of Labor was not honoring the mandate of the Court of Appeals. On remand, Steve

came before me with a motion for an order -- I'm not quoting, but paraphrasing -- enforcing the Court of Appeals mandate. I said that I didn't have the authority to act on a motion like that. If you file a motion for a preliminary injunction or a temporary restraining order, you're in my domain.

Steve replied that the Court of Appeals does that all the time, and I said -- and I think this is a quote -- "Well, the Court of Appeals does what it wants to do. I have to follow the law." Steve appealed my denial of his motion, and I gather the Court of Appeals read in the first paragraph of his brief this statement that I had made at the hearing. So the Court of Appeals opinion, which reversed me again, starts off with that quotation.

S.B.: When they reversed you, they said you did have the authority to order --

L.F.O.: Yes, just to enforce their mandate. That was new law, but that's all right. I would say that Steve Pollak is one of the outstanding lawyers who has appeared before me.

S.B.: Was he a friend before?

L.F.O.: Oh, yes, and he is still. We've laughed about that.

S.B.: What about law clerks? What makes a good law clerk, and have you had them?

L.F.O.: Yes, indeed, I have. First of all, the whole

institution of law clerks and the relationship with incumbent law clerks and past law clerks is one of the real dividends of this job. For somebody like myself to be able to maintain very close relationships with bright, young people and expand my circle of friends -- and my former law clerks are my friends -- is really a tremendous dividend. I would call it a perk of this job. In many respects, I think it is the most rewarding aspect of the job.

A good law clerk is, first of all, very well trained in fundamentals and highly organized. Then, among other things, he or she has a prodigious capacity for work, the ability to handle stress, and, at the same time, has matured to the point of accepting responsibility. I prefer to treat a law clerk as a peer. I've had quite a number who reached that level and several who didn't.

It's a wonderful job for a young lawyer, particularly in this trial court. This is where the rubber hits the road. They see life in the raw, instead of having problems canned and packaged for them, as is the case in law school or in an appellate court. They see the litigation grow from a complaint to lively combat in the courtroom.

S.B.: How many clerks have you had?

L.F.O.: It must be 30 by now. They give a party for my wife

and me every winter, and I give a party for all of them every summer out at my house. With some clerks, we have more of a social relationship than with others, but they're all very, very good friends.

S.B.: That's great. Okay. Now, tell me something about your colleagues on the bench. Who is the easiest to work with or the hardest to work with? I know you don't really work with them.

L.F.O.: One of the things about this job, and one of the reasons why this court is relatively more collegial than some others I know, is because each of us is really in business for himself or herself.

S.B.: That's generally true of all District Courts; isn't it?

L.F.O.: Of course.

S.B.: Right.

L.F.O.: Of course. And it was one of the attractions of the place, again, at this stage in my life. I don't have to get anybody else's vote. It is bruising to get reversed; and if I made decisions in collaboration with others, perhaps I would see things that I missed at the time, thereby protecting myself against that kind of a bruise. But the independence is really quite valuable.

So far as my colleagues are concerned, I think the most admirable one, and the one for whom I have the greatest

affection, is Bill Bryant. We have lunch frequently and talk about things. He has the healthiest instinctive sense of justice and the most congenial, to me, concept of the Constitution and the role of the Federal Judiciary in the implementation of it of anyone I know.

S.B.: How would you describe that role?

L.F.O.: Well, he believes that government is capable of tyranny and that prejudice and discrimination are endemic to the human race, going back to the beginning of mankind. I think Bill Bryant summed it up better than almost anybody I've ever heard when he said, in effect, that discrimination and prejudice: ethnic, racial, religious, sex, are perpetual and, unfortunately, apparently natural. Occasionally, in brief windows of time, determined people can put it into remission. And that's what we are supposed to try to do.

S.B.: But is it just a temporary remission?

L.F.O.: It's temporary if we weaken and/or are overwhelmed. Right now, he's very anxious and I'm very anxious about whether we are in the process of being overwhelmed.

S.B.: What is his and your view of the Constitution?

L.F.O.: Well, I think we're all prejudiced, probably, but I think it's the greatest document ever struck by the hand of man. I would put it with the Ten Commandments. I think the people who

formed the Constitution in, again, that window of opportunity were geniuses of the dimension of a Galileo or an Einstein -- maybe not in sheer intellectual power, but in terms of the application of what they had to a situation.

I guess my formative years in the Constitution go back to my time with Justice Black. Of course, I followed him in the years after my clerkship, and, hopefully, I am following him in many respects now. But I believe that a compassionate application of the language and the legislative history of the Constitution can continue this country, as Reagan put it, as a "beacon on the hill." Yet, it is terribly threatened, and not just by diabolical, small-minded professors, if you'll excuse me, but by circumstances.

The demographic changes in the country, in the sense of the multiplication of Hispanic and black populations to the point where the original white ethnic groups might become a minority, or feel threatened as a minority, could cause, if it is not already causing, a circling of the wagons in a way that would drive them to undermine principles that are expressed in the Constitution.

Then there is all of the current excitement about criminal law and the death penalty. There was a story on a talk show on NPR the other night mentioning that between 1 million and

1.2 million people are incarcerated in the United States right now. The speaker's name was Jerome Miller, I believe. He said he had this hypothesis that he is developing, but has not been able to document yet, from which he extrapolates that there are probably 20 million to 25 million people in the United States who have been in jail. Of course, most of them are males. According to Miller, there are approximately 130 million males in the country, which means that about 15 percent of the male population has been incarcerated, the majority of them black males. He says that some demagogue, some day, is going to get out and organize these people.

S.B.: Former convicts?

L.F.O.: Yes.

S.B.: What can we do?

L.F.O.: Well, I think one thing we can do is to stop packing the courts, particularly the Supreme Court and the Court of Appeals, with people who come down here with an agenda to close down, or limit, access to the courts; to attenuate the power of the courts to protect people from overzealous prosecution; and to protect the power of the judiciary for the future, that is, to preserve it.

S.B.: Do you think that one of the reasons there are so many people in jail is overzealous prosecution of the --

L.F.O.: No, I think there is a lot of crime because of circumstances, too. Obviously, that is true. Now, I don't know why there is so much crime, and I'm not suggesting that people are being incarcerated who are not guilty. I don't know that. So much of this has to do with the drug business. It may be that if we could get a handle on that, at least part of it would ameliorate.

I certainly don't have a solution to it; I don't find that anybody else has at this point; and, of course, we have to hold the line until there is a solution. But there is also the terrible maldistribution of resources. Now, whether that's Adam Smith and nature working in an inevitable way, I don't know, but I know that it creates a situation where injustice is prevalent.

S.B.: Going back to your view of the Constitution, I realize this is not an issue that you've had to face so you may not want to discuss it. Furthermore, I'm not sure it's even pertinent, but I'm curious to know whether you think abortion is protected by the Constitution. If you were on the Court, how would you handle the Roe v. Wade issue?

L.F.O.: Just last night, I went back and read Blackmun's opinion. Now, without having really considered the issue, I think that opinion, going back to the Greeks and Romans and common law, was an exercise of the kind that Justice Black wouldn't have

approved, and I'm aware that Justice Black dissented in Griswold. Whether it's because of constitutional considerations or otherwise, I start with this:

I think that Roe reached a reasonable result. The right to an abortion in the first trimester is a reasonable solution. As you say, I've never faced the issue, but I am enough of a pragmatist to believe, and I would hold, that the state interest in the child at that point is less significant than the woman's right up to the first trimester, whatever you call the woman's right. As to whether this is a fundamental right in the way that that term has been used elsewhere in the Constitution, I think the argument could go either way. But, one way or another, that is where I would come out.

Now, I wrote an opinion involving food stamps for strikers. I don't know whether I mentioned this to you.

S.B.: I don't think so.

L.F.O.: In that case I ruled unconstitutional the statute denying food stamps to a household when any member of it was on strike, without parsing this triple standard that the Supreme Court has announced as to whether it's strict scrutiny, middle-sized scrutiny, or little scrutiny. I don't know what they call it. At any rate, I was reversed.

S.B.: I remember that.

L.F.O.: You remember the case?

S.B.: No. I remember the Supreme Court decision on that. I didn't know that you wrote the first opinion.

L.F.O.: When I wrote the opinion, I realized that I hadn't gone through the mumbo-jumbo of categorizing the standard. That may have been an unscholarly way to proceed, and I did get reversed. Nevertheless, I think that way, and that is probably the way I would have approached the abortion question, if I had had it.

S.B.: What about affirmative action? How would you decide that today?

L.F.O.: I've been through a learning process on that. I came here with, I would say, a liberal Southerner's view of civil rights and the condition of blacks. My very first case was Williams v. Boorstin. I mentioned that earlier. Williams was a black employee of the Library of Congress; Boorstin, of course, was the Librarian of Congress.

Williams was born somewhere in the Caribbean. He went to Dalhousie Law School in Canada for two years and then came down here and became an organizer, a labor organizer, in the Library of Congress. The record indicates that at that time the Library of Congress was known as the “Plantation."

S.B.: You know, Judge, I think we did talk about this one earlier, but I guess not in connection with your views on affirmative action.

L.F.O.: Well, in any event, I took the very strong view in that case that discharging him on account of this misrepresentation of his status as a lawyer was just a manifestation of the process that I had known in the South of getting rid of any black who appeared to be a leader.

Now, I have been appalled at some of the race-discrimination cases that have been brought here by government employees, neurotics and misfits, arguing that their failure to adjust to the office environment was racially motivated. I think that I've probably got as tough a record as anybody here on these kinds of government-employee discrimination claims.

S.B.: When you say you were "appalled," you mean --

L.F.O.: I mean I thought they were without merit, these claims -- most of them. It takes a long time to get to the bottom of them. I've said several times on the record that I know, as well as any white person can know, about discrimination as it existed until Congress and the country in the sixties did something about it. But this is not what we were doing something about. Access to the courts in the employment-discrimination area has been

the subject of a lot of abuse, in my view, and has poisoned public acceptance of the legitimate, serious interests of minorities.

S.B.: Are there ways you could reform it?

L.F.O.: Well, I think that many of these claims are personnel matters that should be handled by labor unions and the normal, internal process of personnel management.

S.B.: Would you change the statute? Would you change Title VII or access to the courts?

L.F.O.: I haven't thought that through, but I certainly think that the whole situation would be better served if the threshhold to litigation in respect to employment discrimination were raised. Now, coming from me, this may be heresy, but I have some anxiety about the effect, the long-term effect, of giving jury trials in these personnel-action situations because they are so fraught with emotional, and often irrational, dynamics. The idea that a District of Columbia jury is going to set the standard for personnel relations for the United States Government doesn't sound too attractive to me. It isn't the kind of thing that Jefferson, Hamilton, and those guys would have initiated.

S.B.: What about affirmative action? Where do you come out on that?

L.F.O.: Affirmative action, I don't have a problem with that,

for instance, in the area of government contracts, and, of course, that's affirmative action. I don't have a problem, for example, in a case where there is discrimination, and I don't mean to isolate it to an individual case as I think Scalia would like to do. In a situation where there is discrimination, I don't have any problem with taking the situation and starting over with it.

Now, my colleague, Gesell, had a solution one time in a case involving the Telephone Company. I don't think I've ever had a chance to replicate it, but it seemed to me eminently correct. In that case, he entered a decree that had the effect of displacing, detouring, or delaying the opportunity for white employees in order to make room for those whom he found to have been victims of discrimination.

S.B.: Was this in hiring or promotion?

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

S.B.: Okay.

L.F.O.: But it must have been promotion. He required the company not only to make room for this black access, but to compensate the displaced whites.

S.B.: You mean financially?

L.F.O.: Yes. Yes. After all, it really is the company's mistake that is being corrected. Therefore, the company should pay

for it; the stockholders should pay for it, and not the employees. The employees should not be asked for give-ups, so to speak.

S.B.: That sounds very clever. I've never heard that.

L.F.O.: In talking about my colleagues, the other person that I would particularly mention is Harold Greene. I think he is, by several dimensions, the most brilliant. He is the most skillful writer. He's had the most extensive, relevant experience. He was here in the United States Attorney's Office right out of law school. Greene was the head of the Appellate Section of the Civil Rights Division at the Department of Justice at a critical time, and he's the architect of the Superior Court. I mean he took that from ground zero.

S.B.: The creation of it, you mean; the creation of the Superior Court?

L.F.O.: Well, it was a court. It was a municipal court and all that, but he made it into a state court by sheer force of character and advocacy. He went up on the Hill and shook the pillars and got it done. He has experience in a capacity that, I think, exceeds anybody's around here by several dimensions.

S.B.: Actually, there was one thing that you once said about Lloyd Cutler, and you said it off the record.

L.F.O.: Did I say that it was off the record?

S.B.: No. No. We were chatting afterwards, so it's not on the tape. I think you said that he was --

L.F.O.: A genius.

S.B.: (Continuing) -- the closest thing to a genius.

L.F.O.: Yes.

S.B.: Well, if you had to make this decision again, that is, whether to become a judge, would you make it differently?

L.F.O.: I don't think I would have if I had known what was going to happen in the last couple of years to our criminal docket. Certainly, if that had been --

S.B.: You mean you wouldn't have accepted the appointment?

L.F.O.: If that had been going on then, I wouldn't have come here just to try drug cases. No.

S.B.: Do you think that may yet change? Is there any hope that the law may change? I guess your view is that we would have to get rid of the mandatory sentencing in order to remove the incentive to bring them here?

L.F.O.: Well, it's worth being here to fight that and try to get rid of it. I'm speaking to the Judicial Conference this year.

S.B.: The D.C. Circuit in Williamsburg, you mean?

L.F.O.: In Williamsburg --

S.B.: Oh, good.

L.F.O.: (Continuing) -- on sentencing. Are you coming?

S.B.: Yes.

L.F.O.: My thesis is that, with this frenzy that exists in the land right now, neither Congress nor the Executive Branch is going to dare an attempt to eliminate the mandatory minimum. My idea is to roll with the punch and bring back split sentences. This assumes -- but I think it accurately assumes -- that the vast majority of people affected by mandatory-minimum sentences are those convicted of drug charges. As a matter of fact, it has been documented that it is the vast majority.

It has also been documented that the vast majority of those who have been convicted and imprisoned for drug charges were users -- abusers of drugs. Have I told you this?

S.B.: No.

L.F.O.: There is now scientific evidence recited by none other than William Bennett that drug treatment in prison effectively creates a substantial period of remission, if not a cure. One of the outrageous vices of the Act of Congress that authorized the mandatory-minimum sentences and the Sentencing Commission is that they rejected out-of-hand rehabilitation as a consideration in determining punishment.

I would authorize judges to impose the mandatory minimum,

but also to split that. At the same time, I would urge Congress to increase massively the funds and personnel available in prisons to give drug treatment, whatever that is.

S.B.: When you say a "split sentence," what do you mean by "split"?

L.F.O.: I'm going to explain. By that I mean that the sentence would be for ten years, provided that at the end of two or three years, if the defendant participates in the drug program in prison, he may apply for the suspension of his sentence to the court -- not to some politically influenced parole commission, but to the court. At that time he would have the opportunity to prove to the court, if he can, that he has successfully completed the program; and that, in the opinion of whoever it is, the defendant is a reasonable risk to be in remission. The reason for the period of two to three years is that experts have told me that two years of treatment in prison will have a beneficial effect.

Then, with the burden on the defendant -- and the government will certainly oppose the motion -- the court can decide whether to suspend the sentence on the condition that the defendant be placed on closely supervised release under the direction of a probation officer, who will report on his progress periodically to the court. Meanwhile, the balance of the sentence is there, and

if he gets a bad report, it's executed again. I think that will work.

S.B.: It'll get you even more involved in the administration of sentencing.

L.F.O.: Well, it's so much more appropriate for us to do that than just to take the guideline number and recite what somebody has told us the sentence is supposed to be, no matter who it is and what he has done.

S.B.: Judges seem to be uniformly angry.

L.F.O.: There is no question about it.

S.B.: But the question, I guess, is whether anyone in Congress is listening.

L.F.O.: No; but maybe they will listen to this: It costs between $20,000 to $25,000 a year to keep somebody in prison. It costs $2000 a year, max, to keep that same person on probation and in a program. That ought to appeal to them.

S.B.: Right. That sounds good. Well, what is your view of the death penalty?

L.F.O.: I'd keep the death penalty. I would not toss it around as they're doing here, but, yes, I'd keep it. The problem is that it is so difficult to decide rationally and on the record which convicted criminals should die and which should live.

Certainly, there are dastardly, inhumane crimes for which I think society, at least as of now, can fairly exact an eye for an eye.

S.B.: Has your judicial philosophy changed over the years?

L.F.O.: Mine? Well, I don't know if it is "philosophy," but it has certainly changed with respect to affirmative action. I think I'm more acutely aware now than I was in the past of the limits on what we can do. At the moment, I don't think of other areas where, to the extent that I have a judicial philosophy, it has changed.

By the way, I'm reading Richard Posner's Law and Literature. Have you read that?

S.B.: No, but I'd like to.

L.F.O.: Posner starts out in the first chapter, which is all I've really finished, with the theme of revenge in literature and law. He develops how law was the outgrowth of dissatisfaction with revenge at the hands of the injured, or his or her family, and the degree to which revenge is an element in our legal engine, if you can call it that, or the drive in our legal engine.

S.B.: I guess it's a natural instinct. What is your view about the process of appointing judges? Is it working? Would you reform it? How would you reform it? You would change the President; right?

L.F.O.: It's certainly not working.

S.B.: You'd have to change the President?

L.F.O.: When the President of the United States can say that he's appointing Clarence Thomas not because he's a black man, but because he's the best-qualified person in the United States, we've got a bad situation.

S.B.: Well, how can we change it? Should the Senate become more active?

L.F.O.: Well, I think it's a political process. I mean these people have gone at it systematically, and they've peppered the courts with clones of Scalia. But I don't know any way to do it, except to get another government, another Administration.

S.B.: Yes, but I don't know how likely that is. The only other questions I was thinking of asking are sort of personal ones about how judging has affected you, your family life, and your personal life. Has it changed your friends?

L.F.O.: It has changed my friends. It's very isolating. I think people don't come around whom I might see, and since we live out in McLean sort of without any neighbors, we are isolated anyway. But I find the work fulfilling, and I think it keeps me limber. It gives me enough control over my time so that I can take proper exercise and do a lot of private reading. I don't

have that many hobbies. I do play tennis and read a lot.

S.B.: And you ski.

L.F.O.: And I ski. This is all compatible with my lifestyle, really quite compatible. I am a gregarious sort of fellow, and I would like to see people more and in easier situations, but I accept that. If it weren't for the twist that the criminal docket has recently taken, I would find this an immensely rewarding experience, particularly at the stage in my life when I picked it up. I'd done everything you could do in private practice that was interesting, although I never did the same thing twice.

I'm sure there would have been more interesting things, but I also noticed that in my firm, with a couple of exceptions, the partners were retired at age 65. I'm long past that, and I think I would have found that demeaning. That is one reason I keep hesitating about taking senior status here. I mean it has been soon enough, and I don't know why I need to inflict that on myself.

S.B.: As a senior judge, though, you can still do everything you want; right?

L.F.O.: Sure. It's just in my imagination. I think I will be taking senior status before very long. I keep saying that. I probably said that at the beginning of the interview.

S.B.: I believe you did. You're going to be teaching next year at Georgetown, so you can spend more time at our place.

L.F.O.: Well, I hope to find a happy home over there. I really do. Peter Edelman said something about maybe, if I like it, I can teach something else sometime.

S.B.: Oh, I'm sure that's true. Well, is there anything that I should have asked, or could have asked, or anything that you want to add?

L.F.O.: I can't think of anything, really. I haven't given much thought to this. I have just sort of started up when you came and turned to other things when you left. Maybe that wasn't fair, but that's about what I did. In any event, I have written opinions and memoranda about every case of any significance. Most of them are published and indexed by West Publishing Company, and there are bound volumes of the published ones in my office. They can be added to my oral history if that would be useful.

S.B.: I think we have covered everything. So that ends the interview.

L.F.O.: I do need to see this before it goes public.

S.B.: Yes.

* * * * * * * *

ORAL HISTORY OF
JUDGE LOUIS F. OBERDORFER

Fifth Interview
January 17, 2008

This is the fifth interview of Louis F. Oberdorfer that was completed as part of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Benjamin F. Wilson. The interview took place at Judge Oberdorfer's chambers on Thursday, January 17, 2008.

Ben Wilson: This is an interview history of Judge Louis Oberdorfer, taking place in his chambers. We're starting at approximately 2:40 p.m., on Thursday, Jan. 17, —

Louis F. Oberdorfer: 2008.

B.W.: 2008, yes sir, thank you. Judge Oberdorfer, I want to thank you for taking the time to answer the questions I have for you today. I know that the Historical Society is eager to have us complete this, and obviously eager for others to hear from you.

I have a number of questions I'd like to ask, recognizing that your oral history was taken about 15 years ago. I know that I will plow over some old ground. I'll try to do that quickly, and follow up on some areas that might not have been fully explored before, and obviously we'll also talk about some new areas.

And what I'd like to do is maybe start with your family history again. If we could start, who were the first Oberdorfers in America?

L.F.O.: I suppose my grandfather Bernard Oberdorfer.

B.W.: Do you know approximately when he first came?

L.F.O.: It was before the Civil War because he was in the Confederate Army.

B.W.: Do you know where he was from?

L.F.O.: Württemberg, Germany.

B.W.: Is that Bavaria?

L.F.O.: Yes, I think.

B.W.: Do you have an idea of about how old he was when he came to the U.S.?

L.F.O.: I could reconstruct it. He died at age 75 in 1905 and he came here in 1855 when he must have been 25.

B.W.: So that means he was born in about 1830 or thereabouts?

L.F.O.: Yes sir. He's buried in a cemetery in Charlottesville. It might be his birth date's on the tombstone.

B.W. Do you know what your grandfather did before he came to America?

L.F.O.: No.

B.W.: When your grandfather came to America, where did he settle initially?

L.F.O.: New York, New York.

B.W.: Do you know what he did in New York?

L.F.O.: Yes, he worked in a cigar factory.

B.W.: Was he married when he came to the U.S.?

L.F.O.: Not married, I don't think, but I don't know.

B.W.: I know from having read your first history that his first wife died.

L.F.O.: My grandfather's first wife had died.

B.W.: Please tell me, do you know the history of how he met her?

L.F.O.: No.

B.W.: But then your grandfather married again and he married the sister of
his first wife and they had five children.

L.F.O.: I suppose that's right.

B.W.: As I understand it your father had a twin.

L.F.O.: Correct.

B.W.: Did you ever meet your uncle?

L.F.O.: Oh yes, I used to stay with him. He was an optometrist in New York, a bachelor. He had a house at 128 East 79th Street and I was very interested to learn that my grandson Kevin, who now lives in New York and is a young lawyer, has just moved into an apartment on East 79th between Second and Third avenues.

B.W.: Not far away, about a block away! Is he aware that his great grandfather—actually uncle—lived there?

L.F.O.: I haven't been able to get on the phone to tell him.

B.W.: That's a nice story. Obviously, your uncle was an identical twin. Was he a similar personality and demeanor to your father?

L.F.O.: Identical. Identical in every way. I used to go, for instance, to college on the train to New York and spend the night or more at my uncle's house and there were no telephones. For instance, on public affairs, even without communicating, as far as I know, they agreed. For example, they both hated Arthur Krock who was a columnist for the *New York Times* and you could hear somewhat the same language, the same verbiage from either of them. Politically they were absolutely identical.

B.W.: Yes, and what was their politics, how would you describe the politics
of your father?

L.F.O.: Wilsonian Democrat. And Roosevelt Democrat at the other end. And Cleveland Democrat.

B.W.: How was it that your one uncle went to New York and your father went to Birmingham? Do you recall what went into their decisions?

L.F.O.: I don't know what sent my uncle to New York but all the way through school they sat together and the story was that when the professor called on one of them, the one that was prepared

would answer whether he was called on or not. They were known as Oberdorfer Number One and Oberdorfer Number Two and I don't know who was One and who was Two.

B.W.: I suspect whoever was prepared got the Number One moniker. That's alright.

Where was your maternal grandfather from?

L.F.O.: He was from a place called Schneidemühl, the spelling of which I leave to you, which was in Germany, but is now, I believe, in Poland.

B.W.: What was his name?

L.F.O.: Louis Falk, F-A-L-K; that's my name, I am named for him.

B.W.: Tell me about him. What did he do?

L.F.O.: He was a merchant in Decatur, Alabama. Incidentally, there's a town in north Alabama called Falkville. According to mythology, he came there as a peddler and set up a stand which became a store—a general merchandise store. He later moved to Decatur, Alabama. Now where he was before he went to Falkville, I don't know.

B.W.: I read that he'd been a director of the Southern Railroad, is that right?

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

B.W.: Yes sir.

L.F.O.: L&N.

B.W.: Oh, Louisville and Nashville? So obviously he was a very successful businessman.

L.F.O.: He was, he was. But I never knew him.

B.W.: And your maternal grandmother?

L.F.O.: She died when my mother was two years old.

B.W.: What was her name? I know her last name was Goodhart.

L.F.O.: I'll have to fill that in, it doesn't come to my mind

right now, obviously I never knew her, but it'll come again.

B.W.: I understand from having read the earlier history that your housekeeper was sent and she helped raise your mother, is that right?

L.F.O.: I know her name, Miss Emma Oppenhagen, O-P-P-E-N-H-A-G-E-N.

B.W.: Do you know how, I mean do you know why she came to Decatur?

L.F.O.: She was a seamstress for the Goodhart family in Cincinnati and later New York. Her great uncles were very, very protective of my mother, and as I understood the story, they were concerned about my mother being raised by a single male parent down there on the frontier. They arranged for Ms. Oppenhagen, who was the family seamstress, to come down and live there and be the housekeeper.

B.W.: Where was your maternal grandmother from? Was she from New York or was she from Cincinnati?

L.F.O.: I assume she was from Cincinnati. The Goodhart family had settled in Cincinnati, they later moved to New York, but they established themselves rather importantly in Cincinnati.

B.W.: Do you recall your mother ever telling you how her mother and father met?

L.F.O.: I do not.

B.W.: Now you say both of your grandfathers served in the Confederate Army. Do you know what rank they reached?

L.F.O.: Private. That's—I won't use the profanity—of private.

B.W.: Yes sir, I appreciate that. Do you know anything about what theaters they served in?

L.F.O.: Yes. My paternal grandfather was living in Charlottesville, and served in sort of the Home Guard in Charlottesville. The mythology about him is that he had a sister

who lived in New York during the war, and he learned that she was penurious and ill, and he went through the lines to New York to take money to her and came back successfully.

My maternal grandfather was in a cavalry unit in the area around Decatur. His commanding officer was a Colonel Harris and the Harris family lived right across the street from him. At least when I was growing up, they were in the house right across the street from me. Ms. Harris was a teacher of my mother, and they were very close. But in any event, it was a cavalry unit. I used to know it, something tells me it was the Fifth Alabama or something like that. He was captured at some point rather early in the war, and the story is that there's a bridge across the Tennessee River at Decatur, and he made clear to me that as a prisoner, he was walked across this railroad bridge and then put on a train to the Libby prison. I think it's near Chicago.

B.W.: Okay, because Libby is in Richmond, there were also prisons in Chicago.

L.F.O.: I'm not sure of that, whether dim recollections or mythology.

B.W.: As I understand it, your mother was one of the first, if not the first woman from Alabama, to attend Vassar, was that right?

L.F.O.: I don't know about first but she certainly was one of the few.

B.W.: Right. Do you know about how that came about?

L.F.O.: I think that was the paternalistic role of the movement. By then it had moved to New York.

B.W.: You've been very gracious to help me get through some of the history. I think you explained to us that your father went to Birmingham; his sister had gone there before. Is that right, do you recall why she chose Birmingham?

L.F.O.: She married somebody from Birmingham.

B.W.: But you don't know what her married name was?

L.F.O.: Yes, her married name was Raywise.

B.W.: And then your father chose to go to Birmingham. Was he younger than his sister then?

L.F.O.: Yes, the twins were the youngest.

B.W.: He graduated from the University of Virginia School of Law?

L.F.O.: And University of Virginia undergraduate, too.

B.W.: Yes, and so had he practiced law somewhere before Alabama?

L.F.O.: No. Again, the mythology is that at that time you were admitted to the bar of Virginia after taking an oral examination by the justices of the Supreme Court of Virginia in a courtroom. And the mythology is that the Supreme Court at that time was meeting in Wytheville, Virginia, and he went to Wytheville to start his examination and went on from there to Birmingham. Now I don't know whether he settled in Birmingham at that time; there's another story.

B.W.: Now your mother, I think you told us, was a prohibitionist. Is that right?

L.F.O.: Yes.

B.W.: And do you recall what prompted her to be a prohibitionist?

L.F.O.: I think I explained it sometime.

B.W.: You did.

L.F.O.: Miss Emma was a Methodist, a prohibitionist. And my mother's religious education was in the Methodist Church in Birmingham, I mean in Decatur. She was a Methodist prohibitionist.

B.W.: Do you recall hobbies that your mother had, interests that she had?

L.F.O.: Well, she was a member, probably a very early member, of

the American Association of University Woman, AAUW. She was active in the affairs of a chapter in Birmingham. She gardened and at some point she played golf. I never understood how, but she did.

B.W.: When you say you didn't understand how, why wouldn't she?

L.F.O.: She was most unathletic. She was overweight, short, all physical qualities that Tiger Woods doesn't have. And not particularly dexterous. I never saw her play, but I have her golf clubs.

B.W.: You say she was a member of the American Association of University Women.

L.F.O.: She also had something to do with the Democratic Party, but I'm not sure.

B.W.: Now, was your mother a baseball fan at all? Or does that come from your father?

L.F.O.: Yes.

B.W.: How did you and your mother spend time together, what was your relationship?

L.F.O.: Well, my mother raised me, my father was not a hands-on father in my childhood. My mother was the law of the house. She used to say my father was a guest in his own house.

B.W.: (laughter) What did he say about that?

L.F.O.: (unintelligible)

B.W.: He's a wise man. When you were growing up and in school, who was it that kind of made certain you did your homework, did your chores, and that you did a certain amount of things.

L.F.O.: She was it.

B.W.: Now, it must have been unusual because there weren't that many women who were college educated in that era.

L.F.O.: Maybe so, I don't know. I know that there were relatively few.

B.W.: I also recall in your earlier interview, you mentioned that you saw your father conduct a cross-examination.

L.F.O.: Yes.

B.W.: Can you talk about some instances of strong memories of your mother's that might be similar that are just as clear in your mind?

L.F.O.: Well I think I told this story earlier but our house was on the side of Red Mountain. And upstairs on what really was the third floor—because there was a basement that was above ground—on the third floor was the screened room which we called the sleeping porch where we slept in the summer. And it looked out over the city. But immediately behind our lot was an alley and I can remember vividly waking up early in the morning, daylight barely, and hearing a horrible cry from a male voice, "Stop that, stop that," or something like that. And my mother went to the screen and looked out and there were police beating a young black boy with a tire tread, and she yelled out the window, "You all stop that!," and they did. Drove away. The boy walked down the alley sobbing, but it was a real alarm in the night; I was probably about ten years old.

B.W.: Do you have any idea how old the boy might have been that was being beaten?

L.F.O.: Older teen, nineteen, might have been up to some mischief.

B.W.: Yes, when I grew up in Jackson there were certain parts of the city that were white and black and we knew which parts of the city were yours, and if you stayed within that part, generally, you didn't run into any problems. Was this fellow in a part of town that he would not have been welcomed in?

L.F.O.: Oh it was lily-white but contemporaneously within the last few weeks I got a letter from a New York lawyer named J. Johnson, a partner of Paul White, saying that he'd just been

visiting his sister in Birmingham and discovered that she and her family were living in the house that I was born in and grew up in, and that the neighborhood was integrated.

B.W.: Is that right?

L.F.O.: I want to show you the letter.

B.W.: Please, I'd love to see it.

L.F.O.: Wait a minute, I'll get it.

B.W.: It's very nice. Here's a picture of the house. And where would the sleeping porch have been?

L.F.O.: On the back side.

B.W.: I see. And structurally, is it as you remember it?

L.F.O.: Oh yeah.

B.W.: That would have been a very substantial house in the time that you grew up.

L.F.O.: Yes it was.

B.W.: What year were you born?

L.F.O.: Nineteen nineteen. That would have been a house built in nineteen fifteen.

B.W.: Yes. Was it built for your father and mother?

L.F.O.: No, they bought it from a man named Nerwill Wilner who developed the whole neighborhood. The guy's brother-in-law is an anchor of some broadcast network.

B.W.: Yes, I saw that in the letter. Thank you for sharing that. I wanted to ask a few other questions about growing up. Let's spend a few minutes talking about your relationship with your father. I know you all went to baseball games together, is that right?

L.F.O.: Yes.

B.W.: And I think you went for walks.

L.F.O.: That was his exercise.

B.W.: Yes, yes. You also indicated you went to movies on

Saturday nights with friends?

L.F.O.: Saturday DAY, not night. Saturday afternoon at five.

B.W.: Why wouldn't you go at night?

L.F.O.: As a youngster I didn't go out at night.

B.W.: And who were your best friends, do you remember their names?

L.F.O.: I do. My very best friend lived back in the back, their backyard and our backyard were separated by an alley. His name was David Massey.

[End of Tape 1, Side A]

Ben Wilson: Tape #2, Thursday, January 17, at about 3:15 p.m. When last we left, Judge, you were telling me about your best friends growing up.

Louis F. Oberdorfer: Another was Hugh Nabers. His father was a doctor and his mother was a Comer, and his grandfather had been Governor Comer of Alabama. They were a very proper southern family, and Hugh Nabers' house was about a block and a half away. They had a very large yard where we used to play baseball and touch football, and that kind of thing. Next door, later, in my still very young life, was a family named Jemison. They were the real estate people in Birmingham. Elbert Jemison was the son my age, who later was an aide to General Patton. I don't know whether he went to VMI or West Point, but he was an aide to Patton.

Emil Hess, who was in my Sunday school class, was the son of the owner of Parisian's store. Dolph Speilberger, who lived a little further away, was also in our Sunday school class. Milton Jacobson lived up the street. I would say those were my closest friends.

B.W.: Did you maintain those friendships?

L.F.O.: David and I remembered all through the years, each other's birthdays.

B.W.: Yes.

L.F.O.: I always wrote him or called him on his birthday and he always wrote me or called me on my birthday. Until last summer I called down there and nobody answered. He and his wife had moved to a retirement home.

B.W.: I also recall your describing going to summer camps in Connecticut and Maine. Tell me about those camps.

L.F.O.: Well they were creations of my mother through a friend of hers who lived in New York by the name of Martha Barbe. The camp in Connecticut was called Housatonic after the river and it was on the river. I don't remember a whole lot about it except that we went canoeing and I guess baseball and stuff like that and hikes. The camp I went to the longest was called Camp Androscoggin in Wayne, Maine. It was on an island in Lake Androscoggin. Beautiful spot. It was run by a guy named Edward Healy whose brother, Jefferson Healy, had been killed in World War I. The camp had a kind of a military aspect to it. For example, I remember one evening there was a flag raising. The campers formed three sides of a square around a flagpole. I was the bugler and I blew the colors. The military aspect was underscored by the presence amongst the counselors of two West Pointers every year, undergraduates or underclassmen, or whatever you call them. The two counselors were cousins; one's last name was Herman. I remember he had two brothers, and I can't remember. Dick Herman, I think, and the other was Orvil Dreyfoos, whose name you will see on the masthead of the *New York Times*. He married a social worker and they were Dartmouth undergraduates. I went to Dartmouth by influence of them.

B.W.: Now you said Herman was a cousin of?

L.F.O.: Dreyfoos.

B.W.: Oh, okay but they were not related to you?

L.F.O.: No, no, no.

B.W.: Okay.

L.F.O.: And we went on canoe trips and hikes. Lots of softball every evening after dinner and it was a very competitive place in the way they gave awards. The highest award that goes out to campers was the Jefferson A. Healy Memorial Trophy. There was a so-called select group called the Androscoggin Club. The way to be admitted in the Androscoggin Club was that the whole camp lined up around the ball field and the incumbent, I don't know whether it was the chairman, president of the Androscoggin Club and a couple of other members, would march around this group and tap very forcefully the person they wanted to admit and that person was directed to go to some undisclosed location and wait to be called. There was a lot of hocus-pocus.

B.W.: Now were you tapped ever?

L.F.O.: Yeah, later in my career there.

B.W.: Let's talk about school—growing up in elementary school and high school. Did you attend the public schools there in Birmingham?

L.F.O.: Yes.

B.W.: And tell me about your favorite teachers in elementary school, high school, junior high.

L.F.O.: My favorite elementary school teacher was Ms. Edmunds. By the way, to be a teacher in the white public schools in Birmingham, you had to be an unmarried woman, whether divorced or not, really I don't know. None of them were married and that was a requirement, as I recall. Another teacher who taught speech and debate was influential with me, Ms. Thomas. I also remember my unfavorite teacher was a Ms. Davis, who taught Latin. She had a nervous habit of popping rubber bands and every now and then one

would break or come off and hit her in the face and she was a certifiable nut, I'm sure, but I took four years of Latin. I would not call her a favorite.

B.W.: Go back to Ms. Edmunds, why did you like her.

L.F.O.: She taught Geography and I was interested in it. She made a lot of sense.

B.W.: Yes.

L.F.O.: You know?

B.W.: As for Speech and Debate, I know you participated in Debate while at Dartmouth.

L.F.O.: And in high school.

B.W.: And in high school, but it started in high school. You were saying that the debate coach or the debate advisor was one of your favorites.

L.F.O.: John Neal.

B.W.: Yes, what was the name of your high school?

L.F.O.: High School?

B.W.: Yes sir.

L.F.O.: The Erskine Ramsey Technical High School.

B.W.: Yes.

L.F.O.: Which is also now integrated, thoroughly integrated.

B.W.: Yes. And how many public high schools, if you recall, were there in Birmingham at that time?

L.F.O.: I can remember three.

B.W.: Yes.

L.F.O.: Ramsey, Phillips and Woodlawn.

B.W.: So there would have been three white public high schools and maybe one black public high school?

L.F.O.: None of those was black.

B.W.: Right.

L.F.O.: I don't know the name of the black high school.

B.W.: Tell me, what was high school like for you?

L.F.O.: Well, for the first time I ran into fraternities and sororities. It was obviously—it was just a given, never thought anything about it. There were fraternities that were all Christian and then there was one Jewish fraternity, I think. Maybe there wasn't a Jewish fraternity in high school. No I don't think there was, we just didn't get in it.

B.W.: Right. And, do you recall ever having a discussion with a Christian friend about that? Was it never talked about or was just assumed?

L.F.O.: If I did I don't remember anything about it.

B.W.: Yes.

L.F.O.: I just accepted it that was the way it was.

B.W.: What activities, if any, were you involved in in high school other than the Debate Team?

L.F.O.: Boy Scouts.

B.W.: Right.

L.F.O.: That's a very interesting phenomenon. Troop 28 Boy Scouts met in a building attached on the grounds of the Independent Presbyterian Church.

B.W.: Yes.

L.F.O.: And, it, of course, was, in my sense of it, quite integrated. I remember one of the scoutmasters was a Mr. Booth, whose son Herbert Booth was one of my social friends, and then there was a guy name Scotty Erkert, who was a C Scout, and he was involved in the activities of the church. They met every Friday night at that church during school time. There was a Boy Scout camp, Camp Cosby, about fourteen miles from where we were and one of the things I remember was our hiking out there and hiking back—more than once. One of my good friends and colleagues was a guy by the name of Coburn Martin. He and I went through the Merit

Badge system and got Eagle Scout, which was quite an achievement.

B.W.: Yes it was. Did you have siblings?

L.F.O.: Siblings?

B.W.: Yes.

L.F.O.: No. No, only child.

B.W.: So you were the only child?

L.F.O.: Which is a part of my persona.

B.W.: Now tell me this, did your parents have academic expectations for you, and, if so, how did they make them manifest to you?

L.F.O.: My father was sort of contemptuous of my intellect really. He was a very smart guy and I always thought he looked down his nose at me and what I read, what I thought, and what I did in school. I wasn't an all-"A" kind of guy. I was an "A" and "B" guy. My mother was supportive with a few lessons.

B.W.: Well, did your father think that the schools in Birmingham were not as good as the schools he'd attended in Charlottesville?

L.F.O.: I'm sure he did.

B.W.: Was he just an all-"A" student up in Charlottesville?

B.W.: Yes.

B.W.: Obviously you did very well in school. I saw where you had skipped a grade or two. (laughter)

L.F.O.: Which was probably a mistake.

B.W.: Why do you say it was a mistake?

L.F.O.: Well I went to college at sixteen. I wasn't ready for college, and I struggled my first semester.

B.W.: Why did your parents encourage you to skip the grades?

L.F.O.: I don't know, I'm not sure they did.

B.W.: What about socially, if you were a senior at sixteen there would have been some boys and girls in your class who where eighteen when they had graduated from high school?

L.F.O.: Well my social life was around Sunday school and I was thinking the other night about that. Our social activity was that we would get together, go to one of the groups' house and play Twenty One. We couldn't drive, so our parents had to deliver us there. I think I was allowed, because you could drive at age sixteen, but I was out of town.

B.W.: Did you date while you were in high school?

L.F.O.: That's another thing. In the South at that time, the Jewish families in Atlanta, Montgomery, Birmingham, and New Orleans had events—the dance thing. In Birmingham, I think it was called a Jubilee. Contemporaries from Atlanta, Montgomery, New Orleans would come to Birmingham for the Jubilee. We would go to Montgomery. They had what was called the Falcon, and I forget where it was in the town. That was our mixed social life.

B.W.: Sure. But there must have been girls that you saw that you liked?

L.F.O.: One of them I married.

B.W.: Well, there you go. Did you like her even then?

L.F.O.: No.

B.W.: Did she pay any attention to you at all?

L.F.O.: No.

B.W.: Was it your mother who graduated from Vassar?

L.F.O.: She didn't graduate; she went there for two years.

B.W.: For two years, okay, but your mother had been to Vassar. Your father UVA undergrad and to the law school. Was there ever any question you would go to college?

L.F.O.: Oh no, no. I think there was a story certainly in that other interview about how it was assumed that I would go to

University of Virginia and go into his law firm.

B.W.: Yes.

L.F.O.: Until my mother discovered in my preteens or early teens that at the University of Virginia they drank whiskey.

B.W.: Yes. Now, my recollection of Dartmouth, of course I went a little after you, was they drank a little bit of everything up there. If they did in my time, I suspect they may have in your time as well. (laughter)

L.F.O.: More than that. (laughter) She just didn't know anything about Dartmouth. (laughter)

B.W.: Now you clearly had some interest in Dartmouth; you met Dick Herman, you met Dreyfoos, and was there any other connection with Dartmouth?

L.F.O.: I had a friend at camp by the name of Al Eiseman E-I-S-E-M-A-N. We lived in the same bunk and I remember he was very active in Dramatics, and I had some role in that. His father had gone to Dartmouth and he was headed for Dartmouth. I heard about it from him. He was contemporary minded.

B.W.: Okay, so, where was he from?

L.F.O.: New York City.

B.W.: I see, and which camp was this?

L.F.O.: The camp in Maine.

B.W.: And so at some point you talked it over with your father, and I understand why your mother would prefer Dartmouth over the University of Virginia. What was your father's thought about it?

L.F.O.: I don't think he had any problem.

B.W.: I had some other questions I wanted to ask you, we'll stop it at 4:00 o'clock or anytime you say.

L.F.O.: 4:00 o'clock will be fine.

B.W.: I think you ran for president of your senior class

in high school, is that right?

L.F.O.: I may have been president, I'm not sure.

B.W.: Well you had to have run before you made it. (laughter)

L.F.O.: Okay.

B.W.: Was that something you wanted to do?

L.F.O.: It just happened.

B.W.: It just happened, okay. Do you recall your opponent or the making of a speech or anything like that?

L.F.O.: I'm not sure there was one.

B.W.: You grew up in the Depression, and you would have been 11 years old in 1930. Is there anything, any personality traits, any impact on you, that are a result of growing up around the Depression?

L.F.O.: Talking about the Depression?

B.W.: Yes.

L.F.O.: Absolutely. I have a responsibility for a certain amount of money, and I have an investment advisor. I keep telling him that I am a child of the Depression and I remember when the stock market went down. I remember the Bank Holiday, (unintelligible) as my dad had gotten a fee of $100 just before the banks were closed. And that was the only money in the neighborhood and they were handing out $5 to this guy. That was an awful time, and it is burned into my persona.

B.W.: I read in the obituary of your father that bankruptcy was one of the areas in which he practiced for many years. He obviously was keenly aware of the financial issues.

L.F.O.: Oh yes. We had the Depression and I can remember listening to Roosevelt and all of them on the radio at night. We were very enthusiastic about him and what was I, 13 years old? In our household, our dinner table was quite animated with discussion

about the Depression and the Administration, and Hoover, and Roosevelt.

B.W.: Right. I suspect your father held some strong views.

L.F.O.: Well yeah, my mother did, too, and she didn't mind expressing them—certainly in the house for sure. She was also well read in current things. There was a group, I don't know whether I referred to this in the earlier dialog or not, but I should have. It was called the Sunday Night Crowd. Did I mention that?

B.W.: I don't think you did.

L.F.O.: A group of their contemporaries. A very sophisticated, well-educated group of people that started out meeting every Sunday night to discuss books that they read and of course it got into a social thing and then they were really part of our/my extended family. I called the man "Uncle" or the woman "Aunt." They were very cool and very, very sophisticated. At an early time I was welcome at their dinner and conversation, it was really part of my experience.

B.W.: Yes, yes, I can remember kind of listening to and sitting on the edge of adult conversations. It's amazing what a person can learn if that opportunity is afforded to you. You mentioned that Sunday Night Crowd as part of a family tradition and you mentioned the Jubilee and the Falcon and other dances that were part of traditions. Were there other family traditions that you recall?

L.F.O.: Not really.

B.W.: I read somewhere in here, if I can find it, this book is called *A Century of Jewish Life in Dixie*, and the author is [Mark H.] Elovitz. This is a remake of his dissertation, which is a history of the Jews in Birmingham in 1870.

L.F.O.: I wasn't in it?

B.W.: No. (laughter) I think there is a mention here, if

I can read it, where they talk about Temple Emanuel. Were your parents members of that?

L.F.O.: I was confirmed there.

B.W.: Yes. And they talked about the Sisterhood of Temple Emanuel.

L.F.O.: Yes, my mother was very active in that. I forgot to mention it.

B.W.: It says, “Mrs. A. L. Oberdorfer, the President.” I’ll just show that to you right there. I don’t know if you recognize the names of any of the other ladies.

L.F.O.: Oh, yeah, I know all of them. Dr. Morris Newfield was our Rabbi.

B.W.: Yes. And later in some of those sections that I have stickers by, there is a discussion of your father. The obituary that appeared in the paper upon his death, as presented, and they discuss that there were a couple of other members of the Synagogue, in addition to your father, that are recognized. I think a Mr. Joseph who was a businessman and a Rabbi as well. Did you attend service regularly?

L.F.O.: I think in Sunday school we were supposed to be there every Saturday.

B.W.: Yes.

L.F.O.: I don’t know whether I was or not.

B.W.: Yes.

L.F.O.: He always made a fuss about it.

B.W.: Yes. And I think your father was on the board there as well.

L.F.O.: Yeah, but very, very passive.

B.W.: When you say your father was passive, what do you mean?

L.F.O.: He was not, he was a realist, he didn’t get as religious.

B.W.: No? And, how did your mother feel about religion?

L.F.O.: About what?

B.W.: About religion. You said your father was a realist.

L.F.O.: Well, she was sort of involved, but it was not a big issue or the subject of much discussion.

B.W.: Alright. In another section of this book it talks about the Klan in Birmingham in the 1920s. I'll just read to you this one author's opinion. He said, "By 1927, conscionable Birmingham came to realize they were dangerously close to being swallowed entirely by zealots and bigots. The Chamber of Commerce, the Jaycees, the newspapers and the bar association under the presidency of Leo Oberdorfer in 1928-29 fought the Klan."

L.F.O.: You read that to me once.

B.W.: Yes, I did, I was just reading it. (laughter) I think it was before we went off the tape. It said, "They achieved their convention against the Klan in the celebrated *Jeff Calloway* case in June 1927, and this plus the advent of the Great Depression served to rupture the decade-long Klan domination of Birmingham." Do you recall talking about the Klan at all with your dad?

L.F.O.: Well, you know my father and Hugo Black were very close personal friends?

B.W.: I was getting there eventually, yes sir. (laughter)

L.F.O.: It started when Black came to town. My dad when he first came to Birmingham wrote a book, I've got a copy of it, *Alabama Justices' Practice*, a handbook, not just a handbook but a very good practice book for practice before the Justices of the Peace.

[End of Tape 1, Side B]

ORAL HISTORY OF
JUDGE LOUIS F. OBERDORFER

Fifth Interview
January 17, 2008

This is the fifth interview of Louis F. Oberdorfer that was completed as part of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Benjamin F. Wilson. The interview took place at Judge Oberdorfer's chambers on Thursday, January 17, 2008.

Ben Wilson: This is an interview history of Judge Louis Oberdorfer, taking place in his chambers. We're starting at approximately 2:40 p.m., on Thursday, Jan. 17, —

Louis F. Oberdorfer: 2008.

B.W.: 2008, yes sir, thank you. Judge Oberdorfer, I want to thank you for taking the time to answer the questions I have for you today. I know that the Historical Society is eager to have us complete this, and obviously eager for others to hear from you.

I have a number of questions I'd like to ask, recognizing that your oral history was taken about 15 years ago. I know that I will plow over some old ground. I'll try to do that quickly, and follow up on some areas that might not have been fully explored before, and obviously we'll also talk about some new areas.

And what I'd like to do is maybe start with your family history again. If we could start, who were the first Oberdorfers in America?

L.F.O.: I suppose my grandfather Bernard Oberdorfer.

B.W.: Do you know approximately when he first came?

L.F.O.: It was before the Civil War because he was in the Confederate Army.

B.W.: Do you know where he was from?

L.F.O.: Württemberg, Germany.

B.W.: Is that Bavaria?

L.F.O.: Yes, I think.

B.W.: Do you have an idea of about how old he was when he came to the U.S.?

L.F.O.: I could reconstruct it. He died at age 75 in 1905 and he came here in 1855 when

he must have been 25.

B.W.: So that means he was born in about 1830 or thereabouts?

L.F.O.: Yes sir. He's buried in a cemetery in Charlottesville. It might be his birth date's on the tombstone.

B.W. Do you know what your grandfather did before he came to America?

L.F.O.: No.

B.W.: When your grandfather came to America, where did he settle initially?

L.F.O.: New York, New York.

B.W.: Do you know what he did in New York?

L.F.O.: Yes, he worked in a cigar factory.

B.W.: Was he married when he came to the U.S.?

L.F.O.: Not married, I don't think, but I don't know.

B.W.: I know from having read your first history that his first wife died.

L.F.O.: My grandfather's first wife had died.

B.W.: Please tell me, do you know the history of how he met her?

L.F.O.: No.

B.W.: But then your grandfather married again and he married the sister of his first wife and they had five children.

L.F.O.: I suppose that's right.

B.W.: As I understand it your father had a twin.

L.F.O.: Correct.

B.W.: Did you ever meet your uncle?

L.F.O.: Oh yes, I used to stay with him. He was an optometrist in New York, a bachelor. He had a house at 128 East 79th Street and I was very interested to learn that my grandson Kevin, who now lives in New York and is a young lawyer, has just moved into an apartment on East 79th between Second and Third avenues.

B.W.: Not far away, about a block away! Is he aware that his great grandfather—actually uncle—lived there?

L.F.O.: I haven't been able to get on the phone to tell him.

B.W.: That's a nice story. Obviously, your uncle was an identical twin. Was he a similar personality and demeanor to your father?

L.F.O.: Identical. Identical in every way. I used to go, for instance, to college on the train to New York and spend the night or more at my uncle's house and there were no telephones. For instance, on public affairs, even without communicating, as far as I know, they agreed. For example, they both hated Arthur Krock who was a columnist for the *New York Times* and you could hear somewhat the same language, the same verbiage from either of them. Politically they were absolutely identical.

B.W.: Yes, and what was their politics, how would you describe the politics of your father?

L.F.O.: Wilsonian Democrat. And Roosevelt Democrat at the other end. And Cleveland Democrat.

B.W.: How was it that your one uncle went to New York and your father went to Birmingham? Do you recall what went into their decisions?

L.F.O.: I don't know what sent my uncle to New York but all the way through school they sat together and the story was that when the professor called on one of them, the one that was prepared would answer whether he was called on or not. They were known as Oberdorfer Number One and Oberdorfer Number Two and I don't know who was One and who was Two.

B.W.: I suspect whoever was prepared got the Number One moniker. That's alright. Where was your maternal grandfather from?

L.F.O.: He was from a place called Schneidemühl, the spelling of which I leave to you, which was in Germany, but is now, I believe, in Poland.

B.W.: What was his name?

L.F.O.: Louis Falk, F-A-L-K; that's my name, I am named for him.

B.W.: Tell me about him. What did he do?

L.F.O.: He was a merchant in Decatur, Alabama. Incidentally, there's a town in north Alabama called Falkville. According to mythology, he came there as a peddler and set up a stand which became a store—a general merchandise store. He later moved to Decatur, Alabama. Now where he was before he went to Falkville, I don't know.

B.W.: I read that he'd been a director of the Southern Railroad, is that right?

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

B.W.: Yes sir.

L.F.O.: L&N.

B.W.: Oh, Louisville and Nashville? So obviously he was a very successful businessman.

L.F.O.: He was, he was. But I never knew him.

B.W.: And your maternal grandmother?

L.F.O.: She died when my mother was two years old.

B.W.: What was her name? I know her last name was Goodhart.

L.F.O.: I'll have to fill that in, it doesn't come to my mind right now, obviously I never knew her, but it'll come again.

B.W.: I understand from having read the earlier history that your housekeeper was sent and she helped raise your mother, is that right?

L.F.O.: I know her name, Miss Emma Oppenhagen, O-P-P-E-N-H-A-G-E-N.

B.W.: Do you know how, I mean do you know why she came to Decatur?

L.F.O.: She was a seamstress for the Goodhart family in Cincinnati and later New York. Her great uncles were very, very protective of my mother, and as I understood the story, they were concerned about my mother being raised by a single male parent down there on the frontier. They arranged for Ms. Oppenhagen, who was the family seamstress, to come down and live there and be the housekeeper.

B.W.: Where was your maternal grandmother from? Was she from New York or was she from Cincinnati?

L.F.O.: I assume she was from Cincinnati. The Goodhart family had settled in Cincinnati, they later moved to New York, but they established themselves rather importantly in Cincinnati.

B.W.: Do you recall your mother ever telling you how her mother and father met?

L.F.O.: I do not.

B.W.: Now you say both of your grandfathers served in the Confederate Army. Do you know what rank they reached?

L.F.O.: Private. That's—I won't use the profanity—of private.

B.W.: Yes sir, I appreciate that. Do you know anything about what theaters they served in?

L.F.O.: Yes. My paternal grandfather was living in Charlottesville, and served in sort of the Home Guard in Charlottesville. The mythology about him is that he had a sister who lived in New York during the war, and he learned that she was penurious and ill, and he went through the lines to New York to take money to her and came back successfully.

My maternal grandfather was in a cavalry unit in the area around Decatur. His commanding officer was a Colonel Harris and the Harris family lived right across the street from him. At least when I was growing up, they were in the house right across the street from me. Ms. Harris was a teacher of my mother, and they were very close. But in any event, it was a cavalry unit. I used to know it, something tells me it was the Fifth Alabama or something like that. He was captured at some point rather early in the war, and the story is that there's a bridge across the Tennessee River at Decatur, and he made clear to me that as a prisoner, he was walked across this railroad bridge and then put on a train to the Libby prison. I think it's near Chicago.

B.W.: Okay, because Libby is in Richmond, there were also prisons in Chicago.

L.F.O.: I'm not sure of that, whether dim recollections or mythology.

B.W.: As I understand it, your mother was one of the first, if not the first woman from Alabama, to attend Vassar, was that right?

L.F.O.: I don't know about first but she certainly was one of the few.

B.W.: Right. Do you know about how that came about?

L.F.O.: I think that was the paternalistic role of the movement. By then it had moved to New York.

B.W.: You've been very gracious to help me get through some of the history. I think you explained to us that your father went to Birmingham; his sister had gone there before. Is that right, do you recall why she chose Birmingham?

L.F.O.: She married somebody from Birmingham.

B.W.: But you don't know what her married name was?

L.F.O.: Yes, her married name was Raywise.

B.W.: And then your father chose to go to Birmingham. Was he younger than his sister then?

L.F.O.: Yes, the twins were the youngest.

B.W.: He graduated from the University of Virginia School of Law?

L.F.O.: And University of Virginia undergraduate, too.

B.W.: Yes, and so had he practiced law somewhere before Alabama?

L.F.O.: No. Again, the mythology is that at that time you were admitted to the bar of Virginia after taking an oral examination by the justices of the Supreme Court of Virginia in a courtroom. And the mythology is that the Supreme Court at that time was meeting in Wytheville, Virginia, and he went to Wytheville to start his examination and went on from there to Birmingham. Now I don't know whether he settled in Birmingham at that time; there's another story.

B.W.: Now your mother, I think you told us, was a prohibitionist. Is that right?

L.F.O.: Yes.

B.W.: And do you recall what prompted her to be a prohibitionist?

L.F.O.: I think I explained it sometime.

B.W.: You did.

L.F.O.: Miss Emma was a Methodist, a prohibitionist. And my mother's religious education was in the Methodist Church in Birmingham, I mean in Decatur. She was a Methodist prohibitionist.

B.W.: Do you recall hobbies that your mother had, interests that she had?

L.F.O.: Well, she was a member, probably a very early member, of the American Association of University Woman, AAUW. She was active in the affairs of a chapter in Birmingham. She gardened and at some point she played golf. I never understood how, but she did.

B.W.: When you say you didn't understand how, why wouldn't she?

L.F.O.: She was most unathletic. She was overweight, short, all physical qualities that Tiger Woods doesn't have. And not particularly dexterous. I never saw her play, but I have her golf clubs.

B.W.: You say she was a member of the American Association of University Women.

L.F.O.: She also had something to do with the Democratic Party, but I'm not sure.

B.W.: Now, was your mother a baseball fan at all? Or does that come from your father?

L.F.O.: Yes.

B.W.: How did you and your mother spend time together, what was your relationship?

L.F.O.: Well, my mother raised me, my father was not a hands-on father in my childhood. My mother was the law of the house. She used to say my father was a guest in his own house.

B.W.: (laughter) What did he say about that?

L.F.O.: (unintelligible)

B.W.: He's a wise man. When you were growing up and in school, who was it that kind of made certain you did your homework, did your chores, and that you did a certain amount of things.

L.F.O.: She was it.

B.W.: Now, it must have been unusual because there weren't that many women who were college educated in that era.

L.F.O.: Maybe so, I don't know. I know that there were relatively few.

B.W.: I also recall in your earlier interview, you mentioned that you saw your father conduct a cross-examination.

L.F.O.: Yes.

B.W.: Can you talk about some instances of strong memories of your mother's that might be similar that are just as clear in your mind?

L.F.O.: Well I think I told this story earlier but our house was on the side of Red Mountain. And upstairs on what really was the third floor—because there was a basement that was above ground—on the third floor was the screened room which we called the sleeping porch where we slept in the summer. And it looked out over the city. But immediately behind our lot was an alley and I can remember vividly waking up early in the morning, daylight barely, and hearing a horrible cry from a male voice, "Stop that, stop that," or something like that. And my mother went to the screen and looked out and there were police beating a young black boy with a tire tread, and she yelled out the window, "You all stop that!," and they did. Drove away. The

boy walked down the alley sobbing, but it was a real alarm in the night; I was probably about ten years old.

B.W.: Do you have any idea how old the boy might have been that was being beaten?

L.F.O.: Older teen, nineteen, might have been up to some mischief.

B.W.: Yes, when I grew up in Jackson there were certain parts of the city that were white and black and we knew which parts of the city were yours, and if you stayed within that part, generally, you didn't run into any problems. Was this fellow in a part of town that he would not have been welcomed in?

L.F.O.: Oh it was lily-white but contemporaneously within the last few weeks I got a letter from a New York lawyer named J. Johnson, a partner of Paul White, saying that he'd just been visiting his sister in Birmingham and discovered that she and her family were living in the house that I was born in and grew up in, and that the neighborhood was integrated.

B.W.: Is that right?

L.F.O.: I want to show you the letter.

B.W.: Please, I'd love to see it.

L.F.O.: Wait a minute, I'll get it.

B.W.: It's very nice. Here's a picture of the house. And where would the sleeping porch have been?

L.F.O.: On the back side.

B.W.: I see. And structurally, is it as you remember it?

L.F.O.: Oh yeah.

B.W.: That would have been a very substantial house in the time that you grew up.

L.F.O.: Yes it was.

B.W.: What year were you born?

L.F.O.: Nineteen nineteen. That would have been a house built in nineteen fifteen.

B.W.: Yes. Was it built for your father and mother?

L.F.O.: No, they bought it from a man named Nerwill Wilner who developed the whole neighborhood. The guy's brother-in-law is an anchor of some broadcast network.

B.W.: Yes, I saw that in the letter. Thank you for sharing that. I wanted to ask a few

other questions about growing up. Let's spend a few minutes talking about your relationship with your father. I know you all went to baseball games together, is that right?

L.F.O.: Yes.

B.W.: And I think you went for walks.

L.F.O.: That was his exercise.

B.W.: Yes, yes. You also indicated you went to movies on Saturday nights with friends?

L.F.O.: Saturday DAY, not night. Saturday afternoon at five.

B.W.: Why wouldn't you go at night?

L.F.O.: As a youngster I didn't go out at night.

B.W.: And who were your best friends, do you remember their names?

L.F.O.: I do. My very best friend lived back in the back, their backyard and our backyard were separated by an alley. His name was David Massey.

[End of Tape 1, Side A]

Ben Wilson: Tape #2, Thursday, January 17, at about 3**:**15 p.m. When last we left, Judge, you were telling me about your best friends growing up.

Louis F. Oberdorfer: Another was Hugh Nabers. His father was a doctor and his mother was a Comer, and his grandfather had been Governor Comer of Alabama. They were a very proper southern family, and Hugh Nabers' house was about a block and a half away. They had a very large yard where we used to play baseball and touch football, and that kind of thing. Next door, later, in my still very young life, was a family named Jemison. They were the real estate people in Birmingham. Elbert Jemison was the son my age, who later was an aide to General Patton. I don't know whether he went to VMI or West Point, but he was an aide to Patton.

Emil Hess, who was in my Sunday school class, was the son of the owner of Parisian's store. Dolph Speilberger, who lived a little further away, was also in our Sunday school class. Milton Jacobson lived up the street. I would say those were my closest friends.

B.W.: Did you maintain those friendships?

L.F.O.: David and I remembered all through the years, each other's birthdays.

B.W.: Yes.

L.F.O.: I always wrote him or called him on his birthday and he always wrote me or called me on my birthday. Until last summer I called down there and nobody answered. He and his wife had moved to a retirement home.

B.W.: I also recall your describing going to summer camps in Connecticut and Maine. Tell me about those camps.

L.F.O.: Well they were creations of my mother through a friend of hers who lived in New York by the name of Martha Barbe. The camp in Connecticut was called Housatonic after the river and it was on the river. I don't remember a whole lot about it except that we went canoeing and I guess baseball and stuff like that and hikes. The camp I went to the longest was called Camp Androscoggin in Wayne, Maine. It was on an island in Lake Androscoggin. Beautiful spot. It was run by a guy named Edward Healy whose brother, Jefferson Healy, had been killed in World War I. The camp had a kind of a military aspect to it. For example, I remember one evening there was a flag raising. The campers formed three sides of a square around a flagpole. I was the bugler and I blew the colors. The military aspect was underscored by the presence amongst the counselors of two West Pointers every year, undergraduates or underclassmen, or whatever you call them. The two counselors were cousins; one's last name was Herman. I remember he had two brothers, and I can't remember. Dick Herman, I think, and the other was Orvil Dreyfoos, whose name you will see on the masthead of the *New York Times*. He married a social worker and they were Dartmouth undergraduates. I went to Dartmouth by influence of them.

B.W.: Now you said Herman was a cousin of?

L.F.O.: Dreyfoos.

B.W.: Oh, okay but they were not related to you?

L.F.O.: No, no, no.

B.W.: Okay.

L.F.O.: And we went on canoe trips and hikes. Lots of softball every evening after dinner and it was a very competitive place in the way they gave awards. The highest award that goes

out to campers was the Jefferson A. Healy Memorial Trophy. There was a so-called select group called the Androscoggin Club. The way to be admitted in the Androscoggin Club was that the whole camp lined up around the ball field and the incumbent, I don't know whether it was the chairman, president of the Androscoggin Club and a couple of other members, would march around this group and tap very forcefully the person they wanted to admit and that person was directed to go to some undisclosed location and wait to be called. There was a lot of hocus-pocus.

B.W.: Now were you tapped ever?

L.F.O.: Yeah, later in my career there.

B.W.: Let's talk about school—growing up in elementary school and high school. Did you attend the public schools there in Birmingham?

L.F.O.: Yes.

B.W.: And tell me about your favorite teachers in elementary school, high school, junior high.

L.F.O.: My favorite elementary school teacher was Ms. Edmunds. By the way, to be a teacher in the white public schools in Birmingham, you had to be an unmarried woman, whether divorced or not, really I don't know. None of them were married and that was a requirement, as I recall. Another teacher who taught speech and debate was influential with me, Ms. Thomas. I also remember my unfavorite teacher was a Ms. Davis, who taught Latin. She had a nervous habit of popping rubber bands and every now and then one would break or come off and hit her in the face and she was a certifiable nut, I'm sure, but I took four years of Latin. I would not call her a favorite.

B.W.: Go back to Ms. Edmunds, why did you like her.

L.F.O.: She taught Geography and I was interested in it. She made a lot of sense.

B.W.: Yes.

L.F.O.: You know?

B.W.: As for Speech and Debate, I know you participated in Debate while at Dartmouth.

L.F.O.: And in high school.

B.W.: And in high school, but it started in high school. You were saying that the debate

coach or the debate advisor was one of your favorites.

L.F.O.: John Neal.

B.W.: Yes, what was the name of your high school?

L.F.O.: High School?

B.W.: Yes sir.

L.F.O.: The Erskine Ramsey Technical High School.

B.W.: Yes.

L.F.O.: Which is also now integrated, thoroughly integrated.

B.W.: Yes. And how many public high schools, if you recall, were there in Birmingham at that time?

L.F.O.: I can remember three.

B.W.: Yes.

L.F.O.: Ramsey, Phillips and Woodlawn.

B.W.: So there would have been three white public high schools and maybe one black public high school?

L.F.O.: None of those was black.

B.W.: Right.

L.F.O.: I don't know the name of the black high school.

B.W.: Tell me, what was high school like for you?

L.F.O.: Well, for the first time I ran into fraternities and sororities. It was obviously—it was just a given, never thought anything about it. There were fraternities that were all Christian and then there was one Jewish fraternity, I think. Maybe there wasn't a Jewish fraternity in high school. No I don't think there was, we just didn't get in it.

B.W.: Right. And, do you recall ever having a discussion with a Christian friend about that? Was it never talked about or was just assumed?

L.F.O.: If I did I don't remember anything about it.

B.W.: Yes.

L.F.O.: I just accepted it that was the way it was.

B.W.: What activities, if any, were you involved in in high school other than the Debate

Team?

L.F.O.: Boy Scouts.

B.W.: Right.

L.F.O.: That's a very interesting phenomenon. Troop 28 Boy Scouts met in a building attached on the grounds of the Independent Presbyterian Church.

B.W.: Yes.

L.F.O.: And, it, of course, was, in my sense of it, quite integrated. I remember one of the scoutmasters was a Mr. Booth, whose son Herbert Booth was one of my social friends, and then there was a guy name Scotty Erkert, who was a C Scout, and he was involved in the activities of the church. They met every Friday night at that church during school time. There was a Boy Scout camp, Camp Cosby, about fourteen miles from where we were and one of the things I remember was our hiking out there and hiking back—more than once. One of my good friends and colleagues was a guy by the name of Coburn Martin. He and I went through the Merit Badge system and got Eagle Scout, which was quite an achievement.

B.W.: Yes it was. Did you have siblings?

L.F.O.: Siblings?

B.W.: Yes.

L.F.O.: No. No, only child.

B.W.: So you were the only child?

L.F.O.: Which is a part of my persona.

B.W.: Now tell me this, did your parents have academic expectations for you, and, if so, how did they make them manifest to you?

L.F.O.: My father was sort of contemptuous of my intellect really. He was a very smart guy and I always thought he looked down his nose at me and what I read, what I thought, and what I did in school. I wasn't an all-"A" kind of guy. I was an "A" and "B" guy. My mother was supportive with a few lessons.

B.W.: Well, did your father think that the schools in Birmingham were not as good as the schools he'd attended in Charlottesville?

L.F.O.: I'm sure he did.

B.W.: Was he just an all-"A" student up in Charlottesville?

B.W.: Yes.

B.W.: Obviously you did very well in school. I saw where you had skipped a grade or two. (laughter)

L.F.O.: Which was probably a mistake.

B.W.: Why do you say it was a mistake?

L.F.O.: Well I went to college at sixteen. I wasn't ready for college, and I struggled my first semester.

B.W.: Why did your parents encourage you to skip the grades?

L.F.O.: I don't know, I'm not sure they did.

B.W.: What about socially, if you were a senior at sixteen there would have been some boys and girls in your class who where eighteen when they had graduated from high school?

L.F.O.: Well my social life was around Sunday school and I was thinking the other night about that. Our social activity was that we would get together, go to one of the groups' house and play Twenty One. We couldn't drive, so our parents had to deliver us there. I think I was allowed, because you could drive at age sixteen, but I was out of town.

B.W.: Did you date while you were in high school?

L.F.O.: That's another thing. In the South at that time, the Jewish families in Atlanta, Montgomery, Birmingham, and New Orleans had events—the dance thing. In Birmingham, I think it was called a Jubilee. Contemporaries from Atlanta, Montgomery, New Orleans would come to Birmingham for the Jubilee. We would go to Montgomery. They had what was called the Falcon, and I forget where it was in the town. That was our mixed social life.

B.W.: Sure. But there must have been girls that you saw that you liked?

L.F.O.: One of them I married.

B.W.: Well, there you go. Did you like her even then?

L.F.O.: No.

B.W.: Did she pay any attention to you at all?

L.F.O.: No.

B.W.: Was it your mother who graduated from Vassar?

L.F.O.: She didn't graduate; she went there for two years.

B.W.: For two years, okay, but your mother had been to Vassar. Your father UVA undergrad and to the law school. Was there ever any question you would go to college?

L.F.O.: Oh no, no. I think there was a story certainly in that other interview about how it was assumed that I would go to University of Virginia and go into his law firm.

B.W.: Yes.

L.F.O.: Until my mother discovered in my preteens or early teens that at the University of Virginia they drank whiskey.

B.W.: Yes. Now, my recollection of Dartmouth, of course I went a little after you, was they drank a little bit of everything up there. If they did in my time, I suspect they may have in your time as well. (laughter)

L.F.O.: More than that. (laughter) She just didn't know anything about Dartmouth. (laughter)

B.W.: Now you clearly had some interest in Dartmouth; you met Dick Herman, you met Dreyfoos, and was there any other connection with Dartmouth?

L.F.O.: I had a friend at camp by the name of Al Eiseman E-I-S-E-M-A-N. We lived in the same bunk and I remember he was very active in Dramatics, and I had some role in that. His father had gone to Dartmouth and he was headed for Dartmouth. I heard about it from him. He was contemporary minded.

B.W.: Okay, so, where was he from?

L.F.O.: New York City.

B.W.: I see, and which camp was this?

L.F.O.: The camp in Maine.

B.W.: And so at some point you talked it over with your father, and I understand why your mother would prefer Dartmouth over the University of Virginia. What was your father's thought about it?

L.F.O.: I don't think he had any problem.

B.W.: I had some other questions I wanted to ask you, we'll stop it at 4**:**00 o'clock or anytime you say.

L.F.O.: 4:00 o'clock will be fine.

B.W.: I think you ran for president of your senior class in high school, is that right?

L.F.O.: I may have been president, I'm not sure.

B.W.: Well you had to have run before you made it. (laughter)

L.F.O.: Okay.

B.W.: Was that something you wanted to do?

L.F.O.: It just happened.

B.W.: It just happened, okay. Do you recall your opponent or the making of a speech or anything like that?

L.F.O.: I'm not sure there was one.

B.W.: You grew up in the Depression, and you would have been 11 years old in 1930. Is there anything, any personality traits, any impact on you, that are a result of growing up around the Depression?

L.F.O.: Talking about the Depression?

B.W.: Yes.

L.F.O.: Absolutely. I have a responsibility for a certain amount of money, and I have an investment advisor. I keep telling him that I am a child of the Depression and I remember when the stock market went down. I remember the Bank Holiday, (unintelligible) as my dad had gotten a fee of $100 just before the banks were closed. And that was the only money in the neighborhood and they were handing out $5 to this guy. That was an awful time, and it is burned into my persona.

B.W.: I read in the obituary of your father that bankruptcy was one of the areas in which he practiced for many years. He obviously was keenly aware of the financial issues.

L.F.O.: Oh yes. We had the Depression and I can remember listening to Roosevelt and all of them on the radio at night. We were very enthusiastic about him and what was I, 13 years old? In our household, our dinner table was quite animated with discussion about the Depression and the Administration, and Hoover, and Roosevelt.

B.W.: Right. I suspect your father held some strong views.

L.F.O.: Well yeah, my mother did, too, and she didn't mind expressing them—certainly in

the house for sure. She was also well read in current things. There was a group, I don't know whether I referred to this in the earlier dialog or not, but I should have. It was called the Sunday Night Crowd. Did I mention that?

B.W.: I don't think you did.

L.F.O.: A group of their contemporaries. A very sophisticated, well-educated group of people that started out meeting every Sunday night to discuss books that they read and of course it got into a social thing and then they were really part of our/my extended family. I called the man "Uncle" or the woman "Aunt." They were very cool and very, very sophisticated. At an early time I was welcome at their dinner and conversation, it was really part of my experience.

B.W.: Yes, yes, I can remember kind of listening to and sitting on the edge of adult conversations. It's amazing what a person can learn if that opportunity is afforded to you. You mentioned that Sunday Night Crowd as part of a family tradition and you mentioned the Jubilee and the Falcon and other dances that were part of traditions. Were there other family traditions that you recall?

L.F.O.: Not really.

B.W.: I read somewhere in here, if I can find it, this book is called *A Century of Jewish Life in Dixie*, and the author is [Mark H.] Elovitz. This is a remake of his dissertation, which is a history of the Jews in Birmingham in 1870.

L.F.O.: I wasn't in it?

B.W.: No. (laughter) I think there is a mention here, if I can read it, where they talk about Temple Emanuel. Were your parents members of that?

L.F.O.: I was confirmed there.

B.W.: Yes. And they talked about the Sisterhood of Temple Emanuel.

L.F.O.: Yes, my mother was very active in that. I forgot to mention it.

B.W.: It says, "Mrs. A. L. Oberdorfer, the President." I'll just show that to you right there. I don't know if you recognize the names of any of the other ladies.

L.F.O.: Oh, yeah, I know all of them. Dr. Morris Newfield was our Rabbi.

B.W.: Yes. And later in some of those sections that I have stickers by, there is a discussion of your father. The obituary that appeared in the paper upon his death, as presented,

and they discuss that there were a couple of other members of the Synagogue, in addition to your father, that are recognized. I think a Mr. Joseph who was a businessman and a Rabbi as well. Did you attend service regularly?

L.F.O.: I think in Sunday school we were supposed to be there every Saturday.

B.W.: Yes.

L.F.O.: I don't know whether I was or not.

B.W.: Yes.

L.F.O.: He always made a fuss about it.

B.W.: Yes. And I think your father was on the board there as well.

L.F.O.: Yeah, but very, very passive.

B.W.: When you say your father was passive, what do you mean?

L.F.O.: He was not, he was a realist, he didn't get as religious.

B.W.: No? And, how did your mother feel about religion?

L.F.O.: About what?

B.W.: About religion. You said your father was a realist.

L.F.O.: Well, she was sort of involved, but it was not a big issue or the subject of much discussion.

B.W.: Alright. In another section of this book it talks about the Klan in Birmingham in the 1920s. I'll just read to you this one author's opinion. He said, "By 1927, conscionable Birmingham came to realize they were dangerously close to being swallowed entirely by zealots and bigots. The Chamber of Commerce, the Jaycees, the newspapers and the bar association under the presidency of Leo Oberdorfer in 1928-29 fought the Klan."

L.F.O.: You read that to me once.

B.W.: Yes, I did, I was just reading it. (laughter) I think it was before we went off the tape. It said, "They achieved their convention against the Klan in the celebrated *Jeff Calloway* case in June 1927, and this plus the advent of the Great Depression served to rupture the decade-long Klan domination of Birmingham." Do you recall talking about the Klan at all with your dad?

L.F.O.: Well, you know my father and Hugo Black were very close personal friends?

B.W.: I was getting there eventually, yes sir. (laughter)

L.F.O.: It started when Black came to town. My dad when he first came to Birmingham wrote a book, I've got a copy of it, *Alabama Justices' Practice*, a handbook, not just a handbook but a very good practice book for practice before the Justices of the Peace.

[End of Tape 1, Side B]

Index

AAUW. *See* American Association of University Women
Aber, Captain, 49
Abram, Morris, 43
Adam Clayton Powell case. *See Powell v. McCormack*
Adams, President Samuel, 176
Adamson v. California, 332 U.S. 46 (1947):
    Criticized, 69, 70, 73
    Defense of, 70-72
    Justice Black's views in, 64-65, 68-75
Affirmative action, 209-213, 218
    See also Oberdorfer, Louis F., Judicial philosophies
Alabama, 1, 3, 42-43, 60-62, 81-82, 92, 104, 110, 124, 130
    See also Anniston, Birmingham, Decatur, Falkville, Florence, Fort McClellan, Mobile, Montgomery, and Tuscaloosa, Alabama
Alabama and Southern Railroad, 82
Alabama Bar Association, 7, 8
Alabama Justices' Practice, 9-10, 62, 241
Alabama Lawyer, The, 62-63
Alexandria, Virginia, 68
American Association of University Women (AAUW), 228, 229
American Bar Association, 113
Amherst College, 16
Andrews Air Force Base, 122
Androscoggin (Camp, Club, and Lake), 232-233, 237
Anecdotes:
    About cases:
        Lockheed Plane Crash cases, (*see Friends for All Children, Inc. v. Lockheed Aircraft Corp*.), 160-166, 190
        Ukrainian-American Bar Association v. Shultz, 695 F.Supp. 33 (D.D.C. 1988), 198
    About judges:
        Leventhal, Harold, 178
        Frank, Jerome, 93-94
        Jones, Walter B., 61-62
    About lawyers:
        Donovan, Jim, 120
        Pickering, John, 128-129
        Paul, Randolph, 93-94
Annapolis, Maryland, 52

Anniston, Alabama, 43
Anti-Semitism, 6-7, 12-15, 17, 20-21
Antitrust Division, U.S. Justice Department, 77-78
Arent, Fox, Kintner, Plotkin & Kahn, 107
Arlington Cemetery, 125
Armistice Day, 44
Arnold, Judge Thurman, 17, 77, 87
Arnold & Fortas, 87
Arnold & Porter, 129, 165
Atlanta, Georgia, 43
Attorney General's Office, U.S., 102-103, 105-107, 110-121, 131-132
See also Justice Department, U.S.

Balch Hill, 22
Baltimore, Maryland, 53
Barbe, Martha, 232
Barr, Tom, 187
Barron v. Baltimore, 32 U.S. 242 (1833), 69, 72
Batsell, Elmer, 78
Battle of the Marne, 163
Bavaria, 79-80
Bay of Pigs prisoner exchange, 114-122
Bay of Pigs, The, by Haynes Johnson, 121
Bazelon, Judge David L., 135
Beddow, Peter, 7
Bell, Griffin, 108, 131, 132, 160
Bennett, William, 215
Bernard Goldfine case. S*ee Goldfine v. U.S.*
Bill of Rights, 64-65, 69-75, 124
First Amendment cases, 158-159
Fourth Amendment drug search cases, 173-177
Bingham, Congressman, 69-70, 72
Birmingham, Alabama, 1-6, 8, 20, 26, 37, 40, 42, 52, 59, 60, 68, 80, 85, 91-92, 108, 225, 227-228, 234, 240-241
Birmingham Bar Association, 6-7, 10
Birmingham Barons, 4
Bittker, Boris, 78, 93
Black, Justice, 6, 59, 60, 63-77, 79, 85, 87, 131, 134, 152, 154, 178, 205, 207-208
100th birthday symposium, 75
Accused by Justice Jackson of blocking appointment as Chief Justice, 66-68
Accused of ethics violation, 67
Cases:
Adamson v. California, 332 U.S. 46 (1947), 64-65, 68-75
Everson v. New Jersey case (*Everson v. Board of Education*, 330 U.S. 1 (1947)), 65, 71

United States v. California, 332 U.S. 19 (1947), 65-66
Willie Francis case (*Louisiana ex rel Francis v. Resweber*, 329 U.S. 459 (1947)), 65
Due Process clause, U.S.C.A. Const. Amend. 14, views on, 64-65, 69
Influence on L.F.O.'s understanding of the Constitution, 76, 205
Jury system, opinion of, 152, 154
L.F.O.'s clerkship with, 59-60, 63-77
Law clerks, relationships with, 76-77, 178
Oberdorfer family, friendship with, 6, 63-64, 78-79, 240-241
Opinions and dissents by, 64-66, 68-75
Scholarship of, 71-72
Working methods of, 77
Blackmun, Justice, 207-208
Black United Front, 190-194
Bloch, Professor Susan, 1, 149
Blocker, Dr., 44-45
Boorstin, Daniel J., 209
Booth, Herbert, 235
Borchard, Professor Edwin M., 74
Bork, Judge Robert H., 73
Boston, Massachusetts 12
Bostick case. *See Florida v. Bostick*
Brennan, Justice, 75
Brooklyn, New York, 119
Brown, Charles C., 53
Brown, Chris, 53
Brown, Stanley, 19
Brown v. Board of Education, 347 U.S. 483 (1954), 6
Bryan, William Jennings, 84
Bryant, Judge William B., 203-204
Buckley, Judge James L., 177, 179
Bundy, Bill, 19

Cacheris, Plato, 185
Cafritz Building, 86, 95
Calhoun, Chad, 95
Callaghan and Company, 92
Camp Crosby, 235
Camp Davis, North Carolina, 49-50
Canada, 138, 209
Canadian Medical Society, 181
Capitol Building, 134
Caplin, Mort, 116
Carmel, California, 55
Carmichael, Stokely, 191

Carter, President James E., 127, 131-132
Carter, Rosalyn, 131
Casque & Gauntlet, 13-14
Castro, Fidel, 115, 118-119
Cave, Bob, 141-142
Central Intelligence Agency, 177
Century of Jewish Life in Dixie, A, by Mark H. Elovitz, 239
Charlottesville, Virginia, 8, 12, 55, 62, 79, 81, 83, 224, 227
Chicago, Illinois, 84
Cincinnati, Ohio, 81-82, 226
Citizens for Kennedy, 102, 121
Civil Division, U.S. Justice Department, 111
Civil Rights Act of 1964, P.L. 88-352, 78 Stat. 241, 112, 124-125, 138-139, 146, 153, 169
Civil Rights Division, U.S. Justice Department, 109-114, 213
Civil War, 47, 49, 72, 75, 83-84, 114, 124, 223
Clark, Ramsey, 111
Cleveland, President Grover, 84
COINTEL program, 190-194
    "Give 'em Bananas" leaflet, 191-194
Columbia Law Review, 30-33
Columbia University, 31, 32
Comer, Braxton Bragg, 231
Comment, "Mobilization for Defense: II. Industrial Mobilization," 50 Yale L.J. 250 (1940), 30-33
Confederate Army, 61-62, 83-84, 223, 226
Congress, U.S., 5, 30, 70, 117, 138, 157-159, 172, 184, 200, 210, 215-217
Connecticut, 2, 131, 232
Connecticut River, 22
Connell, Ann, 113
Constitution, U.S., 73-76, 134, 157, 160, 204-205, 207-208
    See also Bill of Rights *and* Due Process Clause
Corby Court, 21
Cornell University, 37
Counter-intelligence
    see COINTEL program, 190-194
Covington & Burling, 85, 129
Cox, Archibald, 111
Cox, Langford, Stoddard & Cutler, 90-91, 94-96, 109, 126, 128
Cox, Oscar, 32, 95, 128
Cravath firm, 109, 126-127, 185-186
Criminal Division, U.S. Justice Department, 111
Cuba:
    Bay of Pigs prisoner exchange, 114-122
        Cuban Families Committee, 115, 117
    Castro, Fidel, 115, 118-119

Cuban Missile Crisis, 115
Cutler, Lloyd, 90, 94, 126-128, 213-214

Daily , 237, 13
Dalhousie Law School, 138, 209
Dartmouth College, 2-4, 11-20, 21-25, 27, 30, 41, 134, 232
Anti-Semitism at, 12-15
Secret societies at, 13-14
Women and minorities at, 34-36
Davis, Charles, 34
Dean, Dizzy, 4
Dean's list at Dartmouth, 19
Decatur, Alabama, 3, 81-82, 225, 227
Defenders of Wildlife, 167-168
Delaware, 51-54, 57
Delaware River, 52
Demjanjuk, John, 194
Democrats, 6, 85
Democratic National Committee, 178
Dent, Paul, 55-56
Dilworth, J. Richardson, 20
District of Columbia, 24, 30, 32, 52, 85, 86,120, 133, 154, 166-167, 180, 193-194, 195
Metropolitan Police Department, 148, 156, 173-176, 190
District of Columbia Bar, 139-140, 172
Dixie Series of 1931, 4
Donovan & Leisure, 119
Donovan, Jim, 115, 117-120
Donovan, Wild Bill, 119
Doss v. State, 23 Ala. App. 168 (1929), 240
Douglas, John, 117
Douglas, Justice, 87
Dreyfoos, Orvil, 2-3, 12, 232, 237
Drug cases. S*ee* Oberdorfer, Louis F., Judicial philosophies and U.S. District Court
Drug Enforcement Administration, 148
Due Process Clause, U.S.C.A. Const. Amend. 14, 64-65
Dutch East Indies, 46

Earp, Wyatt, 48
East Germany, 81
Eaton, Reverend, 192
Edelman, Peter, 221
Edwards, Judge Harry T., 193
Einstein, Albert, 205
Eiseman, Al, 237

Eisenhower, President Dwight D., 54
Eisenstein, Louis, 86
Elovitz, Mark H., 239
England, 80
Equal Employment Opportunity Act, P.L. 88-352, 78 Stat. 241 §701 et seq., 112
Erkert, Scotty, 235
Erskine Ramsey Technical High School, 1-2, 234
Establishment Clause, 159, 190
Everson v. Board of Education, 330 U.S. 1 (1947) (*Everson v. New Jersey* case), 65, 71

Fair Labor Standards Act of 1938, June 25, 1938, c. 676, 52 Stat. 1060, 200-201
Fairman, Professor Charles, 69-71
Falcon, 236, 239
Falk, Louis, 81-82, 83-84, 225
Falkville, Alabama, 81, 225
Fayerweather Hall, 23
Federal Bureau of Investigation (FBI), 190-194
    Forgeries by, 191-194
Federal Tort Claims Act, Aug. 2, 1946, c. 753, 60 Stat. 812, Title 4, 157
First Amendment cases, 158-159
First Competition, 29-30
Flaherty, Mayor, 131
Florence, Alabama, 81
Florida v. Bostick, 501 U.S. 429 (1991) (*Bostick* case), 176
FOIA case. S*ee* Freedom of Information Act and *Nishnic v. U.S. Department of Justice*
Folklore of Capitalism, The, by Thurman Arnold, 17
Food Stamps for Strikers case (*see Lyng v. International Union, UAW*), 208-209
Fort Amador, Panama, 47-48
Fort Eustis, Virginia, 43
Fort Lee, Virginia, 46
Fort McClellan, Alabama, 43
Fort McPherson, Georgia, 43
Fort Miles, Delaware, 53-54, 56
Fort Saulsbury, Delaware, 52-53
Fortas, Carol Agger, 86-87, 90
Fortas, Justice, 32, 87
Fourteenth Amendment, 69-70, 72
Fourth Amendment Drug Search cases, 173-177
Fourth Coast Artillery, 47-49
Francis, Willie, 65
Francis case (*Louisiana ex rel Francis v. Resweber*, 329 U.S. 459 (1947)), 65
Frank, Jerome, 93-94
Frank, John, 67-68
Frankfurter, Justice, 64-65, 66, 68-69, 108

Freedom of Information Act, P.L. 89-487, 80 Stat. 250, 194, 195
Freedom Riders, 122
Fresno, California, 57
Friends for All Children, 162
Friends for All Children, Inc. v. Lockheed Aircraft Corp., 593 F.Supp. 338 (D.D.C. 1984) (*Lockheed Plane Crash* cases), 160-166, 190

Gable, Clark, 43
Galileo, 205
Garrison, Lloyd, 85
Georgetown University Law Center, 184, 221
Georgia, 43
Georgia v. Pennsylvania Railroad Company, 326 U.S. 693 (1945), 85
Germany, 16, 57-58, 81, 223
Gesell, Judge Gerhard R. (Gerry), 85, 90, 175-177, 212-213
McAleer v. American Telephone & Telegraph Co., 416 F. Supp. 435 (D.D.C. 1976), 212-213
Gielow, Leslie, 39
Ginsberg, David, 32
Goldfine, Bernard, 105
Goldfine v. United States, 268 F.2d 941 (1st Cir. 1959) (*Bernard Goldfine* case), 105
Goodhart, Albert, 81
Goodhart, Philip, 81, 82-83
Gorbachev, 196
Great Depression, 4-5, 238, 240
Green key, 13, 22, 35
Green, Judge Joyce Hens, 189
Green, Judge June L., 189
Greene, Judge Harold H., 144, 213
Griswold case (*Griswold v. Connecticut*, 381 U.S. 479 (1965), 208
Grooms, Hobart, 108
Guthman, Ed, 118-119

Hadley, Arlene, 20
Hamilton, Alexander, 211
Hamilton, Walton, 77-78
Hampton Institute, 34
Hanover, New Hampshire, 19
Harbor Defenses of the Delaware, 51-54
Harmon, John, 131
Harris, Colonel, 83, 227
Harris, Crampton, 67
Harvard University, 11, 23
Harvard Law Review, 30-33, 93-94
Harvard Law School, 25, 32

Hayes, Senator, 138
Healy, Edward, 232
Healy, Jefferson, 232
Henlopen Hotel, 52
Henry Kaiser Enterprises, 95
Herman, Dick, 3, 12, 232, 237
Hess, Emil, 231
Highland Avenue, 4, 42
Hobson, Julius, 190
Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984):
Appealed, 192-193
Case brought under §§ 1983 and 1985, 194
FBI forgeries, 191-192, 193-194
FBI harassment of antiwar protestors and civil rights demonstrators, 190-194
Importance of case, 194
Plaintiffs in, 190, 192
Hohri v. United States, 847 F.2d 779 (Fed.Cir.1988), 157-158, 190
Holmes, Bill, 39
Homestead Air Force Base, 119-120
Hoover, President Herbert, 238
Hoover, J. Edgar, 194
Housatonic, 232
House of Commons, 19
Houston Buffaloes, 4
Howard, Senator, 69-70, 72
Huddleston, George, 5
Hutcheson, Joseph C., Jr., 108

IBM cases, 185, 187
Immigration and Naturalization Service, 196-198
Inaugural Address (Roosevelt), 5
Internal Revenue Service, 87, 106, 116
International Ladies' Garment Workers' Union v. Donovan, 733 F.2d 920 (D.C. Cir. 1984),
Motion for order enforcing Court of Appeals mandate, 200-201
Israel, 194

Jackson, Justice, 66-68
Jackson, Lee, 104
Jackson, Stonewall, statue of, 79
Jacobson, Bobby, 13, 23-24
Jacobson, Milton, 231
Japan, war in, 55
Jeff Calloway case. *See Doss v. State, 23 Ala. App. 168 (1929)*
Jefferson, President Thomas, 124, 211

Jemison, Elbert, 231
John Marshall Hotel, 46
Johnson, Haynes, 121
Johnson, J., 230
Johnson, President Lyndon B., 113, 126, 189
Johnson, Judge Norma Holloway, 189
Jones, Walter B., 61-63, 74
Jones, Judge William B., 131-132, 141, 160
Jubilee, 236, 239
Judge Walter N. Nixon Impeachment case. *See Nixon v. U.S.*
Judges:
    Appointment of, 218-219
    Notable, 187, 188, 204, 213
    Packing courts, 206
Judicial Conference for the D.C. Circuit, 38-39, 214
Judicial nominations, screening committee for, 132-133
Justice Department, U.S., 126, 133, 157, 194-195
    Acting Attorney General, 102
    Antitrust Division, 77-78
    Attorney General, 105-106, 112-114, 119
        Acting Attorney General, 102
        Assistant Attorney Generals, 77, 102-107, 109-110, 131
            use of, 110-111
            See also Arnold, Thurman; Oberdorfer, Louis F., legal career
        Deputy Attorney General, 102, 110, 131
    Bay of Pigs prisoner exchange, involvement in, 114-122
    Civil Division, 111
    Civil Rights Division, 109-114, 213
    Criminal Division, 111
    Drug Enforcement Administration, 148
    Federal Bureau of Investigation, 190-194
    Immigration and Naturalization Service, 196-198
    Lands Division, 111, 135
    Office of Alien Property, 135
    Office of Legal Counsel, 102, 110-111
    Public Information Officer, 118-119
    Solicitor General, 104, 111
    Tax Division, 102-125
    U.S. Attorney for the District of Columbia, 143-144, 147, 155-157, 172-173, 199, 213
Justice of the Peace Court, 8-9

Kahn, Doug, 107
Kahn, Ed, 107-108
Katzen, Sally, 130-131

Katzenbach, Nicholas, 102, 110-111, 112-113, 120
Kennedy, Senator Edward, 135
Kennedy, President John F., 96, 112-114, 116, 121-122, 124
Citizens for Kennedy, 102
Kennedy Library, 114
Kennedy, Robert F., 102-103, 105-107, 109-111, 114, 124, 126-127, 135, 137
Assassination, 121
Bay of Pigs prisoner exchange, involvement with, 114-122
Civil rights issues, involvement in, 112-114
Justice Department, administration of, 110-112
Korea, 55-56
Korematsu case (*Korematsu v. United States*, 323 U.S. 214 (1944), 157
Kozinski, Alex, 179
Krock, Arthur, 225
Ku Klux Klan, 6-7, 17, 240
Kurtz v. Baker, 829 F.2d 1133 (D.C. Cir. 1987), 159, 190

Labor Department, U.S., 200-201
Lafayette Park Demonstration cases, 158-159
Lakeview Elementary School, 1
Lands Division, U.S. Justice Department, 111, 135
Law and Literature by Richard Posner, 218
Law Review Articles published in *Yale Law Journal*S*ee* Oberdorfer, Louis F., Publications
Lawyers' Committee for Civil Rights Under Law, 112-114
Ledyard Bridge, 22
Lee, Robert E., 84
Lehman, Governor, 81
Lehman, Hattie, 81
Leventhal, Judge Harold, 178
Lewes, Delaware, 52, 53, 56
Lewis, John L., 65
Library of Congress, U.S., 138-139, 209-210
Lockheed Plane Crash cases, (*see Friends for All Children, Inc. v. Lockheed Aircraft Corp*.), 160-166, 190
Attorney's fees in, 164-165
Issues in case, 161-163
Reversed in Court of Appeals and retried, 164
Settlement of, 163, 164-166
Lord, Walter, 110
Louisiana, 44, 65, 198
Louisiana ex rel Francis v. Resweber, 329 U.S. 459 (1947) (*Willie Francis* case), 65
Louisville and Nashville Railroad, 82
Lyng v. International Union, UAW, 485 U.S. 360 (1988) (*Food Stamps for Strikers* case), 208-209

Lyon/Terry Building, 8

Madison, President James, 124
Magarian, Greg, 38
Maine, 2, 192, 232, 237
Malinowski, 16
Mandatory minimum sentencing:
Effect of, 142-144, 147-152, 172-173
Reform of, 214-217
Speedy trial issues, 144
See also Oberdorfer, Louis F., Judicial philosophies
Marshall, Burke, 110-111, 124
Martin, Coburn, 235
Maryland, 166-167
Massey, David, 231, 232
Mathias, Senator Charles McC., Jr., 136-137
Mattapeake Ferry, 52
McAleer v. American Telephone & Telegraph Co., 416 F. Supp. 435 (D.D.C. 1976), 212-213
McDougal, Professor Myres, 26-27
McGowan, Judge Carl, 178
McLean, Virginia, 134, 219
Meador, Professor Dan, 71
Mecklin, John Moffat, 15-18
Meiklejohn, Alexander, 16
Meredith, James, 110, 113
Mertens, Jacob, 92-93
Methodist Church, 3, 82, 228
Metropolitan Police Department of the District of Columbia, 148, 156, 173-176, 190
Miami, 120-122
Michaeljon, Alexander, 16
Michie Company, 9
Military Government School, 55
Miller, Cassidy, Larroca & Lewin, L.L.P., 185
Miller, Herbert J., 111
Miller, Jerome, 206
Mississippi, 15, 27, 110, 160
Mississippi River, 197-198
Missouri, 48
Mobile, Alabama, 104
Monterey, California, 55
Montford, Colonel, 48-49
Montgomery, Alabama, 13, 46, 52, 61, 82
Montrealer, 24
Moore's Federal Practice, 10

Morgan, John Tyler, 124-125
Morgenthau, Henry, Jr., 85
Morrisson, James L., 31-32
Mortensen, Stan, 185
Murphy, Justice, 73

Nabers, Hugh, 231
National Organization for Women v. Operation Rescue, 37 F.3d 646 (D.C. Cir. 1994), 166-167, 169, 195-196
National Public Radio, 205-206
Naval Armament Reduction Treaty, 52-53
Neal, John, 234
Neidlinger, Dean, 14
Neill, Sam, 55-56
New Deal, the, 5
New Hampshire, 22
New Hartford, Connecticut, 131
New Haven, Connecticut, 12, 19, 42, 47, 59-60
New Mobilization Committee to End the War in Vietnam, 190-194
New Orleans, Louisiana, 46, 49, 110, 178, 196
New York, New York, 13, 24, 42, 79-83, 85, 93, 114, 115, 118, 126, 193-194, 224
New York Times, 2, 131
Newfield, Morris, 239
Newman, Roger, 64-65, 67-68
Newport News, Virginia, 34
Nishnic v. U.S. Department of Justice, 828 F.2d 844 (D.C. Cir. 1987), 194-195, 199
Nixon, Judge Walter N., 160, 190
Nixon v. United States, 506 U.S. 224 (1993) (*Judge Nixon Impeachment* case), 160, 190
Nolan, John, 117-120
Norfolk, Virginia, 34
North, Oliver, 117, 122
Norway, Maine, 192
Note, "Effect of a Criminal Conviction in Subsequent Civil Suits," 50 Yale L.J. 499 (1941), 31, 33-34
Note, "Immunity from Suit of Foreign Sovereign Instrumentalities and Obligations," 50 Yale L.J. 1088 (1941), 31, 33-34
Note, "Liability of Reconsignors for Freight Charges," 49 Yale L.J. 1457 (1940), 29-30, 33
Nuremburg trials, 66

Oberdorfer, A. Leo, 80-81, 91-92, 224, 229, 231
  brother, 224-225
  education and background, 3, 7-9, 235-236, 237
  legal career, 1, 3-11
  political views, 6-7, 225, 238
  publications, 7

Oberdorfer's Alabama Justices' Practice, 9-10, 62, 241
"Trifles Light as Air", 62-63
religion, 239-240
sister, 227
Oberdorfer, Bernard, 9, 79-80, 83-85, 223
Oberdorfer, Elizabeth Weil, 12, 40-41, 42, 44-46, 63, 92, 167-168, 178, 199
Oberdorfer, Judge Louis F.:
Career goals, 10-11
Birmingham, returning to, 26, 37, 91-92
judgeship, aspirations for, 109, 126-127, 137-138, 214
senior status, taking, 183-184, 220
teaching, 184, 221
Early life:
birth, 1, 230
Boy Scouts, 235
and Great Depression, 4-5, 238
family background, 79-85
marriage, 28, 40-41, 63
racial segregation, experience with, 2, 230
religion, 239-240
reminiscences of, 2-5, 7, 10, 229-231
social life, 236-237, 239
summer camps, 232-233, 237
Education:
Bar review course, 61-62
Dartmouth College, 27, 34-36, 41, 236
anti-Semitism at, 12-15
awards won, 14,
choice of, 2-4, 11-12, 19-20, 237
extracurricular activities, 19, 21-23, 233
fraternity membership, 15
friends at, 12-13, 30
professors, memorable, 15-18
reminiscences of, 23-25
student body, immaturity of, 35-36
value of, 18-20
elementary school, 1, 233
secondary education, 1-2, 18, 233-235, 238
Yale Law School, 21-22, 42, 141
anti-Semitism at, 20-21
choice of, 25
courses and professors, memorable, 26-27, 37, 74, 78
critique of, 34, 36-38
culture shock at, 20
finishes, after World War II, 29, 59-60

First Competition, 25-26, 29-30
Yale Law Journal articles. S*ee* Oberdorfer, Louis F., Publications
Yale Law School Association, 90
Family history:
father (A. Leo Oberdorfer), 80-81, 91-92, 224, 229, 231
brother, 224-225
education and background, 3, 7-9, 235-236, 237
legal career, 1, 3-11
political views, 6-7, 225, 238
publications, 7
Oberdorfer's Alabama Justices' Practice, 9-10, 62, 241
"Trifles Light as Air", 62-63
religion, 239-240
sister, 227
grandparents, 79-85
Civil War, grandfathers' roles in, 83-84, 223, 226-227
maternal grandfather, 225-226, 227
maternal grandmother, 226
paternal grandfather, 9, 79-80, 83-85, 223-224, 227
political views, 84-85
grandson, 224
mother, 226, 228-229, 232, 235, 238-239
education and background, 1, 3, 81-82, 227, 236-237
religion, 239-240
uncle, 224-225
wife, 28, 40-41, 44-46, 63, 236
Friendships, 60-61, 231
at Georgetown Law Center, 184, 221
effect of judgeship on, 219-220
judicial friendships, 178-179, 202
Justice Black, family friendship with, 6, 63-64, 78-79, 240-241
Hobbies, 4, 21-22, 219-220
Judicial philosophies:
abortion, views on, 207-208, 209
affirmative action, 209-213, 218
the Bar, quality of, 185-186
Bill of Rights, application to the states, 74-75
changes in, over time, 218
civil rights, 123-125
the Constitution, views of, 204-205, 207-208
courts, packing of, 206
criminal cases overwhelming District of Columbia Circuit courts, 146-148, 169, 170-172
death penalty, views of, 217-218
drug cases:
appropriate courts for and handling of, 142-143, 146-149

District of Columbia Circuit compared to other circuits, 147-148
drug searches under Fourth Amendment, 173-177
effect on the judiciary, 207, 214
employment discrimination cases, 210-211
influence of growing up in South on, 140-141, 210
influence of Justice Black on, 205
influence of Justice Department experience on, 123
judges, appointment of, 218-219
judgeship, strain of, 170
judiciary, limits on power of, 139-140, 201
judiciary, role of, 204
jury system, value of, 152-156
litigation, cost of, 186-187
mandatory minimum sentences and sentencing guidelines:
defects of, 148-152
effect of, 142-144, 147-148, 172-173
reform of, 214-217
mediation, helpfulness of, 169, 171
prosecutorial discretion and responsibilities, 155-157
reversal by appellate courts, attitude towards, 140-141, 173-177, 203
U.S. Court of Appeals for the District of Columbia Circuit, changes in, 146, 164, 177-179
Kennedy, Robert F.:
campaigns for, 121
relationship with, 102, 105-107, 120-121
Legal career (prior to judgeship):
clerkship with Justice Black, 59-60, 63-77, 134, 205
Black's method of working, 77
notable cases:
Adamson v. California, 332 U.S. 46 (1947), 64-65, 68-75
Everson v. Board of Education, 330 U.S. 1 (1947), 65, 71
United States v. California, 332 U.S. 19 (1947), 65-66
Willie Francis case. S*ee Louisiana ex rel Francis v. Resweber*
influence of Black, 205
relationship with Black, 76-77
at Cox, Langford, Stoddard, & Cutler, 90-91, 94-96
at Justice Department:
Antitrust Division, 77-78
Bay of Pigs, involvement in, 114-122
civil rights matters, involvement in, 109-114, 122-124
description of job, 103-105, 110
Lawyers' Committee for Civil Rights Under Law, organizes, 112-114
military experience, similarities with, 102, 122
notable cases:
Adam Clayton Powell case. S*ee Powell v. McCormack*

Bernard Goldfine case. S*ee Goldfine v. U.S.*
Sergeant York case, 105-107
Water Depletion case. S*ee United States v. Shurbet*
Robert F. Kennedy, relationship with, 102, 120-121
Tax Division, 126
appointed, 102-103
University of Alabama fraternity, speech on civil rights, 124-125
at Paul, Weiss, Wharton and Garrison, 85-87, 135
Jerome Frank footnote, 94
leaves, 90-92
Tower v. Commissioner of Internal Revenue, 327 U.S. 280 (1946), 87
at Wilmer, Cutler, and Pickering, 141, 167, 185-186, 199
growth of firm, 127-131
joins, 109, 125-126
tax partner at, 125-126
post-clerkship offers, 85, 87
Publications:
Comment, "Mobilization for Defense: II. Industrial Mobilization," 50 Yale L.J. 250 (1940), 30-33
Note, "Effect of a Criminal Conviction in Subsequent Civil Suits," 50 Yale L.J. 499 (1941), 31, 33-34
Note, "Immunity from Suit of Foreign Sovereign Instrumentalities and Obligations," 50 Yale L.J. 1088 (1941), 31, 33-34
Note, "Liability of Reconsignors for Freight Charges," 49 Yale L.J. 1457 (1940), 29-30, 33
"On Clerkship Selection: A Reply to the Bad Apple," 101 Yale L.J. 1097 (1992), 179-181
U.S. Army service, 102, 150
assignments in:
Gun Section, 45
Harbor Defenses of the Delaware, 51-54
Panama, 47-49
POW camp, 57-58
culture shock in, 42-44
discharge from, 55-56, 58-59
drafted, 27-28, 58
educational value of, 49-51
enters, 42-43
fiftieth reunion, 55-56
Military Government School, 55
Officers' Candidate School, 49-52
U.S. District Court for the District of Columbia:
appointed to, 178
confirmation process, 133-137
interview with Senator Scott, 133-136

nomination, 127, 131-133, 160
cases:
drafts of decisions, 168-169
methods of handling, 167-170
types of cases heard, 199
court, changes in, 146
disqualifies self from particular cases, 167-168, 199
drug cases:
District of Columbia Circuit compared to other circuits, 147-148
problems with, 146-149
income, effect of judgeship on, 137-138
judges:
collegiality of, 149, 187-189
independence of, 188, 203-204
notable, 203-204, 213
juries in, 152-157
law clerks, 37-39, 141-142, 195
hiring of, 179-183
qualities required, 201-203
relationships with, 202-203
working with, 76, 167-170
lawyers, notable, 184-187, 192, 198-201, 213-214
notable cases, 150-153
First Amendment cases, 158-159
Fourth Amendment drug search cases, 173-177
Friends for All Children, Inc. v. Lockheed Aircraft Corp., 593 F.Supp. 338 (D.D.C. 1984) (*Lockheed Plane Crash* cases), 160-166, 190
Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984), 190-194
Hohri v. United States, 847 F.2d 779 (Fed. Cir. 1988), 157-158, 190
International Ladies' Garment Workers' Union v. Donovan, 733 F.2d 920 (D.C. Cir. 1984), 200-201
Nixon v. U.S., 506 U.S. 224 (1993) (*Judge Nixon Impeachment* case, 160, 190
Kurtz v. Baker, 829 F.2d 1133 (D.C. Cir. 1987), 159, 190
Lyng v. International Union, UAW, 485 U.S. 360 (1988) (*Food Stamps for Strikers* case), 208-209
Lafayette Park demonstration cases, 158-159
National Organization for Women v. Operation Rescue, 37 F.3d 646 (D.C. Cir.1994), 166-167, 169, 195-196
Nishnic v. U.S. Department of Justice, 828 F.2d 844 (D.C. Cir. 1987), 194-195
Ukrainian-American Bar Association v. Shultz, 695 F.Supp. 33 (D.D.C. 1988), 196-198
United States v. Alexander, 755 F.Supp. 448 (D.D.C. 1991), 176-177
Williams v. Boorstin, 663 F.2d 109 (D.C. Cir. 1980), 138-141, 209-210
senior status, taking, 183-184, 220
U.S. Court of Appeals, relationship with, 52, 146, 178-179
Oberdorfer's Alabama Justices' Practice (A. Leo Oberdorfer), 7-10, 62

Office of Alien Property, U.S. Justice Department, 135
Office of Legal Counsel, U.S. Justice Department, 102
Office of Personnel Management, U.S., 154
Officers' Candidate School, 49-52
Ohio, 81-82, 138, 141
"On Clerkship Selection: A Reply to the Bad Apple," 101 Yale L.J. 1097 (1992), 179-181
Operation Rescue, 166-167, 169, 195-196
Oppenhagen, Emma, 81-82, 226, 228
Orange Bowl, 121
Orrick, William, 111
Othello by William Shakespeare, 62-63
Owen, Mickey, 42
Oxford, Mississippi, 110, 113, 122

Paleopitis, 13
Pan American Airlines, 116
Panama:
    Panama Canal, 47
    Panama City, 48-49
Park Avenue, 24
Park Police, U.S., 158-159
Past That Would Not Die, The, by Walter Lord, 110
Patrick, Luther, 5
Patton, George S., 231
Paul, Randolph, 85-86, 135
    Anecdote about, 93-94
    Publications, 92-94
Paul, Weiss, Wharton & Garrison, 85-87, 90, 91-92, 135
Pearl Harbor, 46, 177
Penn Station, 24
Pennsylvania Avenue, 163
People's National Bank, 79
Philadelphia Enquirer, 119
Philadelphia, Pennsylvania, 113
Phillips, Robert, 54-55
Philosophy of "As If", The, by Hans Vaihinger, 16
Pickering, John, 38, 109, 126, 128-129
Pierre Hotel, 42
Pi Lambda Phi, 15
Pilsbury, Anne, 192, 198-199
Pittsburgh, Pennsylvania, 131
"Plantation," the, 138, 209
Poland, 81, 225
Pollak, Steve, 199-201
Portal-to-Portal litigation, 67-68

Porter, Paul A., 87
Posner, Richard, 218
Poultice, 128
Powell, Adam Clayton, 105
Powell, Justice, 39
Powell v. McCormack, 395 U.S. 486 (1969) (*Adam Clayton Powell* case), 105
Presidents of the United States:
Adams, Samuel 176
Carter, James E., 127, 131-132
Cleveland, Grover, 84
Eisenhower, Dwight D., 54
Hoover, Herbert, 238
Jefferson, Thomas, 124, 211
Johnson, Lyndon B., 113, 126, 189
Kennedy, John F., 96, 112-114, 116, 121-122, 124
Madison, James, 124
Reagan, Ronald, 196, 205
Roosevelt, Franklin D., 5, 7, 67-68, 157, 238
Presidio, the, 55
Prettyman, E. Barrett, Jr., 117-119
Princeton University, 15-16, 23-25
Prohibition Movement, 3, 82
Public Information Officer, U.S. Justice Department, 118-119

Ramfjord, Per, 184-185, 199
Rassenberger, Ray, 117
Rayburn, Senator Sam, 106-107
Rea, Howard, 91
Reagan, President Ronald, 196, 205
Red Cross, 116
Rehoboth, Delaware, 52, 53-54, 56
"Responsibilities of a Tax Advisor" by Randolph Paul, 93-94
Reykjavik Conference, 196-197
Rezneck, Dan, 133
Richmond, Virginia, 46
Ring Building, 94-95
Robinson, Judge Aubrey E., Jr., 187-188
Roe v. Wade, 410 U.S. 113 (1973), 207-208
Roosevelt, President Franklin D., 5, 7, 67-68, 157, 238
Rosenthal, Albert J., 31
Rusk, Dean, 113
Russakoff, Dale, 108
Russia, 196-198
Rutledge, Justice, 73

Sao Paolo Province, Brazil, 31
Sachs, Steve, 186
Saigon, Vietnam, 161
San Francisco, 111
Scalia, Justice, 212, 219
Schneidemühl, Poland, 81, 225
Scott, Senator, 133-136
Seattle, Washington, 57
Securities and Exchange Commission, U.S., 177
Segal, Bernard, 113-114
Segregation, 2, 34
Sellers, Manny, 103-105
Senate, U.S., 160
Sentelle, Judge David B., 179
Sentencing Commission, U.S., 215
Sentencing guidelines. S*ee* Mandatory minimum sentencing; Oberdorfer, Louis F., Judicial philosophies, mandatory minimum sentences and sentencing guidelines
Sergeant York case, 105-107
Shakespeare, William, 62-63
Shea, Bob, 116
Shulman, Professor Harry, 26
Smith, Adam, 207
Smith College, 21-23, 40-41
Solicitor General, of the U.S., 31, 104, 111
Solomon, Dick, 78
South Dakota, 39
Special Competence of the Supreme Court, The, by Walton Hamilton, 78
Special Master, 165
Speedy Trial Act of 1974, P.L. 93-619, 88 Stat. 2076, 171
Speedy trial issues, 144, 171
Speilberger, Dolph, 231
Spitzer, Lyman, 141
Spong, Bill, 133
Sporkin, Judge Stanley, 175-177
St. Elizabeths Hospital, 159
Stanford Law Review, 69
Stephens, Jay A., 143
Stewart, Justice, 31
Stone, Chief Justice, 66
Streight, Colonel or General, 83
Sunday Night Crowd, 239
Superior Court of the District of Columbia, 199
  appropriate court for drug cases, 143-144, 147, 149, 172-173
  created by Judge Harold Greene, 213
Supreme Court, U.S., 6, 104, 105, 159, 160, 166-167, 195-196
  Cases:

Adamson v. California, 332 U.S. 46 (1947), 64-65, 68-75
Barron v. Baltimore, 32 U.S. 242 (1833), 69, 72
Brown v. Board of Education, 347 U.S. 483 (1954), 6
Everson v. Board of Education, 330 U.S. 1 (1947)), 65, 71
Florida v. Bostick, 501 U.S. 429 (1991), 176
Georgia v. Pennsylvania Railroad Company, 326 U.S. 693 (1945), 85
Griswold v. Connecticut, 381 U.S. 479 (1965)), 208
Korematsu v. United States, 323 U.S. 214 (1944)), 157
Louisiana ex rel Francis v. Resweber, 329 U.S. 459 (1947) (*Willie Francis* case), 65
Lyng v. International Union, UAW, 485 U.S. 360 (1988) (*Food Stamps for Strikers* case), 208-209
Nixon v. United States, 506 U.S. 224 (1993) (*Judge Nixon Impeachment* case), 160, 190
Powell v. McCormack, 395 U.S. 486 (1969) (*Adam Clayton Powell* case), 105
Portal-to-Portal litigation, 67-68
Roe v. Wade, 410 U.S. 113 (1973), 207-208
Tower v. Commissioner of Internal Revenue, 327 U.S. 280 (1946), 87
United States v. California, 332 U.S. 19 (1947), 65-66
Chief Justice, selection of, 66-68
Justices:
Black, 6, 59-60, 63-77, 78-79, 85, 87, 131, 134, 152, 154, 178, 205, 207-208, 240-241
See also Black, Justice
Blackmun, 207-208
Brennan, 75
Douglas, 87
Fortas, 32, 87
Frankfurter, 64-65, 66, 68-69, 108
Jackson, 66-68
Murphy, 73
Powell, 39
Rutledge, 73
Scalia, 212, 219
Stewart, 31
Stone, 66
Thomas, 219
Vinson, 60, 102
White, 60-61, 102-103, 110, 121
Packing of, 206
Surrey, Stan, 115
Syverud, Kent, 38-39

Tadlock, Guy, 104, 105
Tax Division, U.S. Justice Department, 102-126
See also Oberdorfer, Louis F., Legal career (prior to judgeship), and Justice Department
Tax Law Review, 94
Temple Emanuel, 239-240

Ten Commandments, 204
Tennessee, 43, 106-107
Terry v. Ohio, 392 U.S. 1 (1968), 175
Terry stop case. S*ee Terry v. Ohio*
Texas, 108, 131
Thanksgiving, 45, 115
Thomas, Ellen, 158-159
Thomas, Justice, 219
Title VII. S*ee* Civil Rights Act of 1964, P.L. 88-352, 78 Stat. 241
Title 42, U.S. Code, Section 1983 (Civil Action for Deprivation of Rights), 194
Title 42, U.S. Code, Section 1985 (Conspiracy to Interfere with Civil Rights), 194, 196
Toledo, Ohio, 141
Toronto Bar Association, 181
Tower v. Commissioner of Internal Revenue, 327 U.S. 280 (1946), 87
Treasury, U.S., 116
Treblinka, 194
"Trifles Light as Air" by A. Leo Oberdorfer, 62-63
Truman Administration, 65
Tuscaloosa, Alabama, 112
Tweed, Harrison, 114
Tydings, Joe, 133

Ukrainian-American Bar Association, 196
Ukrainian-American Bar Association v. Shultz, 695 F.Supp. 33 (D.D.C. 1988), 196-198
Union Station (District of Columbia), 173
United Mine Workers, 65
United States v. Alexander, 755 F.Supp. 448 (D.D.C. 1991), 176-177
United States v. California, 332 U.S. 19 (1947), 65-66
United States v. Shurbet, 347 F.2d 103 (5th Cir. 1965) (*Water Depletion* case), 107-108
University of Alabama, 75, 122, 124-125
University of Maryland, 53
University of Michigan, 26, 38-39
    Michigan Law Review, 38-39
University of Virginia, 3, 8, 11-12, 71, 81, 228, 237
U.S. Air Force, 160-162
U.S. Army, 28, 42-59, 102, 150
    See also Oberdorfer, Louis F., U.S. Army service
U.S. Attorney for the District of Columbia, 143-144, 147, 155-157, 172-173, 199, 213
U.S. Court of Appeals for the 1st Circuit:
    Goldfine v. United States, 268 F.2d 941 (1st Cir. 1959) (*Bernard Goldfine* case), 105
U.S. Court of Appeals for the 2nd Circuit:
    Frank, Jerome, 93-94
U.S. Court of Appeals for the 5th Circuit:
    Judges:
        Bell, Griffin, 108
        Grooms, Hobart, 108

Hutcheson, Joseph C., Jr., 108
Water Depletion case (*United States v. Shurbet*, 347 F.2d 103 (5th Cir. 1965)), 107-108
U.S. Court of Appeals for the District of Columbia Circuit:
Changes in, 146, 164, 177-179
Judges:
Arnold, Thurman, 17, 77, 87
Bazelon, David L., 135
Bork, Robert H., 73
Buckley, James L., 177, 179
Edwards, Harry T., 193
Leventhal, Harold, 178
McGowan, Carl, 178
Sentelle, David B., 179
Vinson, Frederick M., 60, 102
Wald, Patricia M., 93, 179
Wilkey, Malcolm R., 139-140
Wright, J. Skelly, 65, 178
Law clerks, methods of hiring, 179-183
Notable cases:
Fourth Amendment Drug Search cases, 173-177
Friends for All Children, Inc. v. Lockheed Aircraft Corp., 593 F.Supp. 338 (D.D.C. 1984) (*Lockheed Plane Crash* cases), 160-166, 190
Hobson v. Wilson, 737 F.2d 1 (D.C.Cir. 1984), 190-194
International Ladies' Garment Workers' Union v. Donovan, 733 F.2d 920 (D.C. Cir. 1984), 200-201
Kurtz v. Baker, 829 F.2d 1133 (D.C. Cir. 1987), 159, 190
National Organization for Women v. Operation Rescue, 37 F.3d 646 (D.C. Cir. 1994), 166-167, 169, 195-196
Nishnic v. U.S. Department of Justice, 828 F.2d 844 (D.C. Cir. 1987), 194-195
Williams v. Boorstin, 663 F.2d 109 (D.C. Cir. 1980), 138-141, 209-210
Packing of the court, 206
Speedy trial litigation, 144
U.S. District Court for the District of Columbia, relationship with, 146
U.S. Court of Appeals for the Federal Circuit, 132
Hohri v. United States, 847 F.2d 779 (Fed.Cir. 1988), 157-158, 190
U.S. Court of Claims, 132
U.S. District Court for the District of Columbia, 138-140, 150-152
Docket changes, 146
Drug cases:
acquittals in, 155-157
court overwhelmed by, 142-144, 146-149, 170-173
judicial criticism of drug searches, 175-177
techniques of drug searches, 173-175
Judges:
Bryant, William B., 203-204
Gesell, Gerhard R., 85, 90, 175-177, 212-213

Green, Joyce Hens, 189
Green, June L., 189
Greene, Harold H., 144, 213
Johnson, Norma Holloway, 189
Jones, William B., 131-132, 141, 160
Robinson, Aubrey E., Jr., 187-188
Sporkin, Stanley, 175-177
Notable cases:
First Amendment cases, 158-159
Fourth Amendment Drug Search cases, 173-177
Friends for All Children, Inc. v. Lockheed Aircraft Corp., 593 F.Supp. 338 (D.D.C. 1984) (*Lockheed Plane Crash* cases), 160-166, 190
Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984), 190-194
Hohri v. United States, 847 F.2d 779 (Fed.Cir. 1988), 157-158, 190
International Ladies' Garment Workers' Union v. Donovan, 733 F.2d 920 (D.C. Cir. 1984), 200-201
Kurtz v. Baker, 829 F.2d 1133 (D.C. Cir. 1987), 159, 190
Lafayette Park Demonstration cases, 158-159
Lyng v. International Union, UAW, 485 U.S. 360 (1988) (*Food Stamps for Strikers* case), 208-209
McAleer v. American Telephone & Telegraph Co., 416 F. Supp. 435 (D.D.C. 1976), 212-213

National Organization for Women v. Operation Rescue, 37 F.3d 646 (D.C. Cir. 1994), 166-167, 169, 195-196
Nishnic v. U.S. Department of Justice, 828 F.2d 844 (D.C. Cir. 1987), 194-195
Nixon v. United States, 506 U.S. 224 (1993) (*Judge Nixon Impeachment* case), 160, 190
Ukrainian-American Bar Association v. Shultz, 695 F.Supp. 33 (D.D.C. 1988), 196-198
United States v. Alexander, 755 F.Supp. 448 (D.D.C. 1991), 176-177
Williams v. Boorstin, 663 F.2d 109 (D.C. Cir. 1980), 138-141, 209-210
Size of court, 142
Speedy trial litigation, 144
U.S. Court of Appeals for the District of Columbia Circuit, relationship with, 146
Workload of court, 142-143
U.S. District Court for the Eastern District of Louisiana, 178
U.S. Marshals Service, 122
U.S. Navy, 60-61
U.S. Sentencing Commission, 215

Vaihinger, Hans, 16
Vassar College, 1, 82, 227, 236-237
Vermont, 22, 131
Vietnam, 162-166, 190, 193
Vietnam War, 190-194
Demonstrations, 190-191, 193
Orphan plane crash case. S*ee Friends for All Children, Inc. v. Lockheed Aircraft Corp*.,

161-162
Vinson, Chief Justice, 60, 102
Virginia, 71, 133, 166-167, 228

Wald, Judge Patricia M., 93, 179
Wallace, George, 61, 112-113, 123, 125
War on Drugs, 176
Washington, D.C. S*ee* District of Columbia
Washington, L. M., 10
Washington Post, The, 108
Water depletion case. *See U.S. v. Shurbet*
Watkins, Bob, 132
Watson, Tom, 17
Weil, Dick, 12-13
Weil, Elizabeth, 12, 40-41, 42, 44-46, 63, 92, 167-168, 178, 199
West Publishing Company, 221
White, Justice, 60-61, 102-103, 110, 121
White House, 112-113, 116, 158
White River Junction, Vermont, 24
Wilkey, Judge Malcolm R., 139-140
Willard, Hotel, 126
Williams and Connolly, 133
Williams v. Boorstin, 663 F.2d 109 (D.C. Cir. 1980), 209-210
Remedy fashioned by L.F.O., 139
Retaliatory firing issue, 138-139, 210
Reversed on appeal, 139-141
Williamsburg, Virginia, 44-45, 214
Williamsburg Inn, 45
Willie Francis case. S*ee Louisiana ex rel Francis v. Resweber*
Wilmer and Brown, 109, 126
Wilmer, Cutler & Pickering, 38, 109, 125-131, 141, 167, 186
"Alumni list", 130-131
Growth of firm, 127-131
Management of firm, 128-129
Wilner, Nerwill, 230
Wise, David, 121
Wolfe, Singleton, 106
World Series of 1941, 42
World War I, 52, 105-107
World War II, 11, 42-59, 85, 157
Draft policies, 58
German POW camps, 57-58
Wright, Judge J. Skelly, 65, 178
Württemburg, Bavaria, 79, 223

Yale Law School, 20-22, 25-38, 42, 50, 59-60, 69, 74, 78, 141

Critique of, 34, 36-38
Women and minorities at, 34-35, 37
Yale Law Journal, 21, 25-34, 44, 67, 78
Comment, "Mobilization for Defense: II. Industrial Mobilization," 50 Yale L.J. 250 (1940) (joint note with *Harvard Law Journal* and *Columbia Law Journal)*, 30-33
Comparison, 1941 and now, 29
Editor of, 21, 26-29, 44
Note, "Effect of a Criminal Conviction in Subsequent Civil Suits," 50 Yale L.J. 499 (1941), 31, 33-34
Note, "Immunity from Suit of Foreign Sovereign Instrumentalities and Obligations," 50 Yale L.J. 1088 (1941), 31, 33-34
Note, "Liability of Reconsignors for Freight Charges," 49 Yale L.J. 1457 (1940), 29-30, 33
"On Clerkship Selection: A Reply to the Bad Apple," 101 Yale L.J. 1097 (1992), 179-181
Yale Law School Association, 90
See also Oberdorfer, Louis F., Education
Yale University, 11, 19, 20, 23
Yellowstone National Park, 167-168
York, Sergeant, 105-107

BIOGRAPHY

Judge Oberdorfer, a native of Birmingham, Alabama, was appointed United States District Judge for the District of Columbia on October 11, 1977 and entered on duty November 1, 1977. Judge Oberdorfer elected to take senior status on July 31, 1992. He is a 1939 graduate of Dartmouth College, and received an LL.B. degree from Yale Law School in 1946, after military service from 1941 to 1946.

Judge Oberdorfer was law clerk to Justice Hugo L. Black during the 1946 Term of the Supreme Court. He was Assistant Attorney General, Tax Division, Department of Justice, from 1961 to 1965. He was in private practice from 1947 until 1961, and again from 1965 until 1977. At the time of his appointment to the bench, Judge Oberdorfer was a member of Wilmer, Cutler and Pickering in Washington, D.C., and was serving as President of the District of Columbia Bar. He also served as Co-Chairman of the Lawyers' Committee for Civil Rights Under Law, 1968-1969, a member of the Advisory Committee on the Federal Rules of Civil Procedure, and was Chief Executive Officer of the Legal Services Corporation during its formation in 1975.

From 1962 to 1984, he was a member of the Judicial Conference Advisory Committee on Civil Rules. He is presently a member of the American Bar Association, the American Law Institute, the District of Columbia and Alabama Bars, and an Adjunct Professor at the Georgetown Law Center.

Judge Oberdorfer is married to the former Elizabeth Weil. They have four children: John, Kathryn, Thomas, and William, and five grandchildren.

SUSAN LOW BLOCH

(O) Georgetown Univ. Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9063

(H) 4335 Cathedral Avenue, N.W.
Washington, D.C. 20016
(202) 363-7979

EDUCATION

Law School: J.D. - Summa Cum Laude; University of Michigan, 1975
First in class (GPA = 4.26; 4.0=A)

Honors:
- Michigan Law Review, Note & Comment Editor 1974-75; Associate Editor, 1973-74
- Order of the Coif - March 1975
- Daniel H. Grady Prize Award - 1975 (Highest standing through the full course of studies in the law school)
- Henry M. Bates Memorial Scholarship - 1975 ("Outstanding Seniors in Law School")
- Class of 1908 Memorial Scholarship - 1975 (Highest scholastic average at beginning of senior year)
- Maurice Weigle Scholarship Award - 1973 (Outstanding achievement in freshman year)
- American Law Book Company Book Award for "Most significant contribution toward overall legal scholarship" - first year, 1973; second year, 1974; third year, 1975
- West Publishing Company Award for Highest Scholarship Average in the Class - first year, 1973; second year, 1974; third year, 1975

Graduate School: University of Michigan
- Ph.C. - Computer and Communication Sciences - August 1972
- Master's Degree - Computer and Communication Sciences - May 1971
- Master's Degree - Mathematics - December 1970

Honors:
- National Science Foundation Fellow, 1970-72
- Teaching Fellowships, 1969-72

EDUCATION (con't)

Undergraduate: Smith College - B.A. Major: Mathematics;
Minor: Economics

Honors: Graduated "With Distinction" (Top 10 students); Phi Beta Kappa (Junior Year); Sigma Xi; House President

High School: West Orange Mountain High School, New Jersey - Valedictorian; American Field Service Exchange Student; Class Officer in freshman, sophomore, junior and senior years

PROFESSIONAL STATUS

Member of the Bars of District of Columbia Court of Appeals, United States Court of Appeals for the District of Columbia, and United States Supreme Court

PROFESSIONAL EXPERIENCE

Law: Professor
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
1982-present

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
1978-82

Judicial Clerkship - U.S. Supreme Court
Mr. Justice Thurgood Marshall - 1976-77

Judicial Clerkship - U.S. Court of Appeals
D.C. Circuit - Judge Spottswood W. Robinson, III - 1975-76

Other Fields: University of Michigan Computing Center, Summer 1970

Bell Telephone Laboratories - Department of Computer Graphics and Economics - September 1968 - August 1969

Radio Astronomy Observatory, University of Michigan - Assistant Research Mathematician - September 1966 - September 1967

GEORGETOWN COURSES AND COMMITTEES

Courses:
Federal Courts and the Federal System;
Constitutional Law I: The Federal System;
Constitutional Law II: Individual Rights;
Communications Law;
Supreme Court Seminar

Expected Future Courses:
Comparative Constitutional Law;
Administrative Law; Regulation of Mass Media

Committees:
University Rank and Tenure Committee (1992-present)
Georgetown University Law Center Rank and Tenure Committee (1991-92, 1994-present)
Chair of Judicial Clerkship Committee (1983-1992);
Financial Aid Committee (1987-92)
Finance Committee (1983-1986);
Long-Term Planning Committee (1983-84)

COMMUNITY AND PROFESSIONAL SERVICES

Editorial Advisor to "Justice"--Journal of the Department of Justice 1986-92
Steering Committee of D.C. Bar Section for Courts, Lawyers, and the Administration of Justice (1995-present)
Board of Institute for Public Representation (since 1985)
Worked with the GULC Street Law Clinic on "Lawyer-Teacher Partnership" for D.C.
D.C. Bar Ethics Committee--1990-93
D.C. Bar Administrative Law Section Nominating Committee
D.C. Bar Committee to Celebrate the Bicentennial of the Constitution (1986-91) Organized and participated in series of symposia on the Constitution--Winner of "Best Bar Project for 1987"; Helped to establish "Lawyer-Teacher Partnership" in D.C.
United States Court of Appeals Oral History Project
United States Court of Appeals for the District of Columbia Circuit Judicial Conference--Arrangements/Program Committee (1986; 1990); Chair of Program Committee (1994)
American Civil Liberties Union Nominating Committee (1985)

Committee of Visitors for the University of Michigan Law School (since 1978)
Smith College Reunion Committee (1986-92)

MEMBERSHIPS

Women's Bar Association;
Women's Legal Defense Fund;
American Civil Liberties Union;
American Bar Association;
Washington Council of Lawyers;
Steering Committee - D.C. Bar Section on Courts, Lawyers, and The Administration of Justice

LECTURES AND PANEL DISCUSSIONS

"Disciplining Congress: The Taxing and Spending Powers," 10th Annual Lawyers Convention, The Federalist Society, 1966 (arguing against the constitutionality of the 104th Congress' adoption of supermajority rules - Nov. 1996

"Can One Constitutionally Sue a Sitting President?" AALS Conference Section on Civil Rights, New Orleans, Jan 1995

"Suing a Sitting President," Federalist Society Debate with William Van Alstyne, Detroit Michigan, October 1994

Judge in Seigel Memorial Moot Court Competition, Duke University, February 1995

Participant, Gruter Institute Conferences
1989-Law and Biology: A Sense of Justice-Monterey, California;
1990-Law and Biology-Squaw Valley, California;
1991-An Interdisciplinary Approach to Environmental Regulation-Tauberbischofheim, Germany

Interviews on Constitutional Law and the Supreme Court for CNN, NBC, ABC, NPR (including some interviews in Spanish), and newspapers

Moderator for Role of Attorney General--October 1988

Panel participant on "Independent Counsel: Lawful or Not?"--GULC--March 1988

Organizer and Moderator, "Celebrating the Bicentennial of the Constitution--Can It Serve Another 200 Years?," June 30, 1987

Participant in various "Press Briefings on the Supreme Court" at GULC

Tribute to Chief Judge Spottswood Robinson United States Court of Appeals for the D.C. Circuit, Judicial Conference, 1987

Presentation to the Legal History Section of the AALS, "John Marshall's Misuse of History"

Panel participant on Role of the Supreme Court--GULC

PUBLICATIONS

"The Constitutionality of Supermajority Rules," 14 Constitutional Commentary 1 (1997)

Foreword: "Can We Indict a Sitting President?" Nexus, Spring 1997

Point-Counterpoint, "The Supermajority Rules are Unconstitutional," ABA Journal, Spring 1997

Supreme Court Politics: The Institution and Its Procedures, with co-author Thomas Krattenmaker, West Publishing Co., 1994

Point - Counterpoint, "Does the Constitution Permit Suing a Sitting President?" ABA Journal, June 1994

Foreword, "Do What You Can With What You Have," Okla. L. Rev. 1994

"Remembering Justice Thurgood Marshall," 1 Journal on Fighting Poverty 9 (1993)

The Supreme Court Justices, Illustrated Biographies 1789 - 1993, Supreme Court Historical Society (ed. Clare Cushman) (Contributer) 1993

BEVERIDGE & DIAMOND PC

Principal
1350 I Street, N.W.
Suite 700
Washington, DC 20005-3311
(T) (202) 789-6023
bwilson@bdlaw.com

PRACTICES

- Appellate Litigation
- Citizen Suits
- Civil Rights/Employment Litigation
- Commercial Litigation
- Construction Litigation
- Environmental
- Environmental Litigation
- Litigation
- Media, Entertainment, and Sports Law
- NEPA and State NEPA - Environmental
- Pro Bono Litigation
- Safe Drinking Water Act
- Superfund/CERCLA
- Toxic Tort and Product Liability
- Wetlands - Environmental

EDUCATION

- Dartmouth College (A.B./History, magna cum laude, Phi Beta Kappa, 1973)
- Senior Fellow, Rufus Choate

Benjamin F. Wilson

Benjamin F. Wilson is the Managing Principal of Beveridge & Diamond, P.C. He joined the Firm as a Principal in 1986 and has been a past member of the Firm's Management Committee and past Chairman of the Litigation Practice Group. His present litigation practice encompasses a wide range of activities in both state and federal courts, including commercial litigation matters, environmental litigation, employment litigation, and regulatory matters. He has been lead counsel in several complex commercial and environmental litigation matters for major corporations and developers. Mr. Wilson also has represented a number of cities and local government agencies on Clean Water Act Enforcement and wetlands development matters.

Mr. Wilson draws his litigation expertise from experience in both the public and private sectors. A native of Jackson, Mississippi, Mr. Wilson graduated *magna cum laude* from Dartmouth College in 1973 with an A.B. degree in history. While at Dartmouth, he was elected to Phi Beta Kappa and named both a Rufus Choate Scholar and a Senior Fellow. He received his Juris Doctor degree from Harvard Law School in 1976.

Currently, Mr. Wilson is serving as lead counsel in a major chromium cleanup litigation in New Jersey. He served as lead counsel for a number of municipalities including: the City of New Orleans; the Sewerage and Water Board of New Orleans; the District of Columbia Water and Sewer Authority; the Metropolitan Water District of Greater Chicago; the San Antonio Water System; and the City of New Haven, Connecticut, among others.

Mr. Wilson is experienced in dealing with cases involving the impact of the filling of wetlands and the obligations to comply with federal and state environmental laws, including the Clean Water Act and the Endangered Species Act. Specifically, he has become involved in both regulatory and litigation issues arising out of the filling of wetlands as part of the expansion of airports and stadium projects. He has served as lead counsel in numerous "Superfund" cases and on environmental audits and assessments pertaining to the sale of corporations and their assets.

Mr. Wilson has served as lead environmental counsel to the District of Columbia Sports and Entertainment Commission on the project to build the new Verizon Center for the Washington Wizards professional basketball team and Washington Capitals professional hockey team. Mr. Wilson also represented prospective developers on the proposed football stadium for the Washington Redskins. He has addressed issues related to

(continued)

Benjamin F. Wilson, *continued*

Scholar
- Harvard University (J.D., 1976)

BAR ADMISSIONS & MEMBERSHIPS
- Georgia
- District of Columbia
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, 11th Circuit
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Claims
- U.S. District Court, District of Columbia
- U.S. District Court, Northern California
- Supreme Court, Georgia
- U.S. Court of Appeals, District of Columbia
- U.S. Court of Appeals, Georgia
- American Bar Association (Vice Chair, Environmental Justice Committee, Section of Individual Rights and Responsibilities, 2003-2004)
- Life Member of the Fellows of the American Bar Foundation
- Federal Bar Association
- National Bar Association (Past Chairman, 1987-1998), Environmental, Energy and Public Utility Section
- Gate City Bar Association
- Georgia Conference of Black Lawyers
- Chairman, Board of Elections and Ethics of the District of Columbia (1990-2002)
- Past Chairman, Washington

the siting of the arena, as well as environmental issues related to historic preservation, soil contamination, air, ground traffic, noise, visual impacts and wetlands.

Mr. Wilson has represented financial bodies on a wide variety of environmental issues pertaining to the sale and ownership of real property, and on wetlands and Endangered Species Act litigation, as well as several complex commercial litigation matters.

After several years in private practice with the Atlanta, Georgia law firm of King & Spalding, specializing in litigation and tax matters, Mr. Wilson joined the Civil Division of the Department of Justice in 1979. At the Justice Department, he gained substantial trial expertise in commercial litigation matters, appearing on behalf of the government in the United States Court of Appeals for the Federal Circuit, the United States Court of Claims and district courts throughout the United States. While at the Department, he received Special Achievement Awards in recognition of his performance in 1981 and 1982. Prior to joining Beveridge & Diamond, P.C., Mr. Wilson joined the law firm of Rose, Schmidt, Chapman, Duff and Hasley as an associate in 1983. In 1985, he became a partner in the firm, specializing in civil litigation.

Mr. Wilson has counseled small and developing businesses throughout his career. He has also counseled on a variety of commercial contract matters and negotiated player contracts on behalf of professional athletes.

A member of the bars of Georgia and the District of Columbia, Mr. Wilson is active in the American Bar Association, the National Bar Association, where he has served for 15 years on the Environmental, Energy and Public Utilities Section (including serving as past Chairman), and the Washington Bar Association.

PROFESSIONAL HIGHLIGHTS

Mr. Wilson serves as an Adjunct Professor of Environmental Law at the Howard University School of Law. In 2010, Mr. Wilson was named to the Board of Directors of the Northwestern Mutual Life Insurance Company. He was recognized by the National Bar Association Corporate Law Section when he received its coveted Outside Counsel Award for his excellent work and service on behalf of his clients, and his work promoting diversity in the profession. Recently, Mr. Wilson was feted for his work organizing the Diverse Partners Network in Washington, D.C., in the July/August issue of *Diversity & The Bar* in an article entitled "DC Diverse Partners Network."

(continued)

BEVERIDGE & DIAMOND PC

Benjamin F. Wilson

- Lawyers' Committee for Civil Rights & Urban Affairs
- Member, Northwestern Mutual Insurance Company Board of Trustees
- Member, Maryland/DC Chapter of The Nature Conservancy Board of Trustees
- Member, National Environmental Justice Advisory Council
- The Environmental Forum profile, "The Defender"
- Diversity and The Bar article, "DC Diverse Partners Network"

He was also named to the Board of Trustees of the Maryland/DC Chapter of The Nature Conservancy.

In 2009, he received the Wiley Branton Award for outstanding achievement in civil rights law by the *Washington Lawyers Committee for Civil Rights and Urban Development* (WLC). The Environmental Leadership Program's (ELP) Mid-Atlantic Network also honored the work of Mr. Wilson with "A Celebration of Leadership: Remembering Dr. King's Environmental Legacy with Benjamin Wilson." In 2008, the Environmental Law Institute (ELI) published a profile on Mr. Wilson in The Environmental Forum. In the profile, "The Defender," ELI notes that Ben "sees representing business and governmental clients not only as a mandate to achieve their goals but as an opportunity to benefit the environment and civil rights."

Mr. Wilson was also appointed to the National Environmental Justice Committee as one of three representatives of Corporate America in 2004. He also serves as Co-Chairman of the American Bar Association Environmental Justice Committee which received the Committee Excellence Award in 2004 for the Section of Individual Rights and Responsibilities. Mr. Wilson has also served as both a member (2003) and Chairman (2004) of the Policyowners' Examining Committee for Northwestern Mutual. From 1990 to 2004, he served as Chairman of the Board of Elections and Ethics of the District of Columbia. He has served two terms as Co-Chairman of the Washington Lawyer's Committee for Civil Rights and Urban Affairs. He has served as the Chairman of the Board of Directors of Healthy Babies, Inc., Chairman of the Board of the Dwight A. Mosley Memorial Fund, Chairman of the Advisory Board of WAMU public radio, Member of the National Environmental Justice Advisory Council, and he has also served on the Boards of Funds for the Community's Future and the Advisory Board of the National Association for Public Interest Law. He is AV Peer Review Rated.

PUBLICATIONS

Use of Supplemental Environmental Projects to Address Environmental Justice

A Private Sector Guide to Community Relations