E. Barrett Prettyman, Jr., Esquire

Interviews conducted by:
Robert H. Kapp, Esquire

March 19, June 6, July 15, September 4, October 3, 1996,
February 11 and May 14, 1997
# TABLE OF CONTENTS

**Preface** ................................................................. i

**Oral History Agreements**

E. Barrett Prettyman, Jr., Esq. ........................................ iii-v

Robert H. Kapp, Esq. ............................................. vii-vii

**Biographical Sketches**

E. Barrett Prettyman, Jr., Esq. ....................................... ix-xv

Robert H. Kapp, Esq. .................................................. xvii-xviii

**Oral History Transcript of Interviews**

March 19, 1996 .......................................................... 1

June 6, 1996 ................................................................. 30

July 15, 1996 ................................................................. 76

September 4, 1996 ...................................................... 108

October 3, 1996 ............................................................ 133

February 11, 1997 ....................................................... 171

May 14, 1997 ................................................................. 197

**Index** ................................................................##### A1
NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcriptions were 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.

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

Interviewee Oral History Agreement

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, E. Barrett Prettyman, Jr., except as otherwise provided herein and in Schedule B attached hereto, 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 of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions, herein provided.

2. The foregoing transfer is subject to any exceptions specified in Schedule B hereto.

3. I also reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing, including speeches, of which I am an authority or co-author.

4. I authorize the Society, subject to any exceptions in Schedule B attached hereto, 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.

E. Barrett Prettyman, Jr. 12/19/97

Date

SWORN TO AND SUBSCRIBED before me this 19th day of December, 1997.

Brenda P. Cohen
Notary Public

My commission expires June 14, 2002

ACCEPTED this 16th day of January, 1998 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbon
### Schedule A

Tape recordings and transcript resulting from seven interviews conducted by Robert H. Kapp on the following dates:

<table>
<thead>
<tr>
<th>Date</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 19, 1996</td>
<td>1 Tape, 29 pages (pp. 1-29)</td>
</tr>
<tr>
<td>June 6, 1996</td>
<td>2 Tapes, 46 pages (pp. 30-75)</td>
</tr>
<tr>
<td>July 15, 1996</td>
<td>1 Tape, 32 pages (pp. 76-107)</td>
</tr>
<tr>
<td>September 4, 1996</td>
<td>1 Tape, 25 pages (pp. 108-132)</td>
</tr>
<tr>
<td>October 3, 1996</td>
<td>1 Tape, 38 pages (pp. 133-170)</td>
</tr>
<tr>
<td>February 11, 1997</td>
<td>1 Tape, 26 pages (pp. 171-196)</td>
</tr>
<tr>
<td>May 14, 1997</td>
<td>1 Tape, 30 pages (pp. 197-226)</td>
</tr>
</tbody>
</table>
Schedule B

Exceptions to Oral History Agreement

(Please initial only those provisions that you wish to apply, and only if you wish to limit the use of your interview.)

1. ___ The entire tape and transcript shall not be made available to anyone other than myself, the interviewer, and the Society without my express written permission until [state date or event].

2. ___ The following page(s) [number] and the tape relating thereto shall be closed to all users until [state date or event], except with my express written permission.

3. ___ It is agreed that the Society shall not authorize publication of the transcript or any [substantial] part thereof during my lifetime without my express written permission, but that the Society may authorize scholars, researchers and others to make brief quotations therefrom without my written permission.

4. X ___ It is agreed that the Society shall not authorize publication by others of the transcript or any part thereof, including brief quotations, during my lifetime without my express written permission.

5. ___ I retain all of my right, title, and interest in the tapes, transcripts and their content, including literary rights and copyrights, until [state date or event], at which time these rights shall vest in the Historical Society of the District of Columbia Circuit.

6. X ___ In the event of my incapacity, I designate Robert H. Kapp of 555 Thirteenth Street NW, Washington, DC 20004 to make decisions related to the use of my oral history interview. Upon the death or incapacity of this designee, I authorize the Society to make such decisions on my behalf.

7. ___ I impose the following additional conditions [describe]:

---
Interviewer Form

Historical Society of the District of Columbia Circuit

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with E. Basell Bretherick for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Robert H. Karp, 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 a 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.

Signature of Interviewer

SWORN TO AND SUBSCRIBED before me this 20th day of January, 1998.

[Signature]

Notary Public

DEANNE P. LANGE

My commission expires September 15, 1999

ACCEPTED this 28th day of January, 1998 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

[Signature]

Daniel M. Gribbon
## Schedule A

Tape recordings and transcript resulting from seven interviews of E. Barrett Prettyman, Jr. on the following dates:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 19, 1996</td>
<td>1 Tape, 29 pages (pp. 1-29)</td>
</tr>
<tr>
<td>June 6, 1996</td>
<td>2 Tapes, 46 pages (pp. 30-75)</td>
</tr>
<tr>
<td>July 15, 1996</td>
<td>1 Tape, 32 pages (pp. 76-107)</td>
</tr>
<tr>
<td>September 4, 1996</td>
<td>1 Tape, 25 pages (pp. 108-132)</td>
</tr>
<tr>
<td>October 3, 1996</td>
<td>1 Tape, 38 pages (pp. 133-170)</td>
</tr>
<tr>
<td>February 11, 1997</td>
<td>1 Tape, 26 pages (pp. 171-196)</td>
</tr>
<tr>
<td>May 14, 1997</td>
<td>1 Tape, 30 pages (pp. 197-226)</td>
</tr>
</tbody>
</table>
E. Barrett Prettyman, Jr.

Born: June 1, 1925, Washington D.C.

Secondary Education: St. Albans School, Washington, D.C. (graduated 1943)

1943 - 1945: 84th Division, 9th Army (combat in Germany)

1945 - 1949: Yale University (B.A., 1949)

1949 - 1950: Reporter on the Providence Journal (Rhode Island)


1955: Co-editor of Mr. Justice Jackson's posthumous volume, "The Supreme Court in the American System of Government".


December 1962 - April 1963: In charge of transportation for the exchange of $53 million worth of goods for 1,113 Bay of Pigs prisoners, including negotiations with Castro in Cuba.


July 1963 - April 1964: Special Assistant to the White House and the President's representative on the Interagency Committee on Transport Mergers.

July 1, 1964 - Partner, Hogan & Hartson Present:

IX
Special Counsel to Committee on Standards of Official Conduct of the United States House of Representatives ("Ethics Committee") in connection with the so-called "ABSCAM" investigation, February 1980 to July 1981.

Outside Counsel to Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, in United States v. AT&T (1978).

Special Consultant to Subcommittee to Investigate Problems Connected with Refugees and Escapees, of the Senate Judiciary Committee, on fact-finding trip to Vietnam, December 1967 - January 1968 (five weeks in Vietnam).

OTHER PROFESSIONAL ACTIVITIES:

Present

Fellow, American College of Trial Lawyers

Member, former President, American Academy of Appellate Lawyers

Life Member, American Bar Foundation

Vice President, Member of Executive Committee, Trustee, and Chairman of Publications Committee, Supreme Court Historical Society

Member, Judicial Conference of the District of Columbia Circuit (since 1958)

Member, CPR - selected panel of ADR neutrals for Washington, D.C.

Trustee emeritus, American University, Washington, D. C.

Member, Metropolitan Washington Board of Trade

Member, Judicial Evaluation Committee, D.C. Bar

Member, Advisory Board of the Media Law Reporter, published by BNA
Member of Board, former President, PEN/Faulkner Foundation

Member, International Visiting Committee, Muhlenberg College

Member, Board of Governors, and former President, the Lawyers Club of Washington

Commissioner (appointed by the Chief Justice), Judicial Fellows Commission

Member, District of Columbia and Supreme Court Bars. Also admitted to practice in the United States Courts of Appeal for the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 11th and District of Columbia Circuits.

Who's Who in America, Who's Who in American Law, Best Lawyers in America

Faculty Member (for five years), Appellate Practice Institute, sponsored by the ABA Appellate Judges Conference

Member, Board of Directors of the Historical Society for the District of Columbia Circuit

Member, The Alfalfa Club, The Barristers, Chevy Chase Club, Metropolitan Club

Past:

First President, District of Columbia (Unified) Bar (1972-73)

President, Vice President and Treasurer, The District of Columbia Bar Foundation

Member, Board of Governors, District of Columbia Bar (1973-74)

Member, Special Committee on Amicus Curiae Briefs of the American Bar Association

Member, Board of Directors, District of Columbia Bar Association (voluntary)

Member, International Advisory Group, Toshiba Corporation

Consultant, "Separate But Equal," TV movie produced and directed by George Stevens, 1992

District of Columbia Delegate to the American Bar Association
Member, National Campaign Committee, Graduate Program for Judges, University of Virginia School of Law

Chairman, appointed by the United States Court of Appeals for the District of Columbia Circuit, to write the Bicentennial history of that Court (1976)

Member, Court of Appeals Subcommittee, Court System Standing Committee of the D.C. Bar, see Report, S. Prt. 98-34, 98th Cong., 1st Sess. (April 1983)

Member, Long Range Planning Committee, District of Columbia Bar

Member, Executive Committee and Board of Trustees; Chairman, Committee on Educational Policy; Chairman, Ad Hoc Compensation Committee, Committee on Finance and Member, Gift Review Committee of American University, Washington, D.C.

Member, National Advisory Committee, National Institute for Citizen Education in the Law

Member, Board of Governors, St. Albans School, Washington, D.C. (1957-63, 1965-71), Chairman (1965-67)

Vice-President, Member of Executive Committee, Board of Trustees, American Judicature Society

Member, Advisory Board, Institute for Communications Law Studies, Columbus School of Law, Catholic University

Member, Board of Trustees, Georgetown University's Institute for Public Interest Representation

Member, Board of Trustees, Center for Law and Social Policy

Member, Washington Institute of Foreign Affairs

Corporate member, Children's Hospital of the District of Columbia

Member, Advisory Board, the Salvation Army
AUTHOR OF:


"WISER IN HIS OWN CONCEIT", 51 ABA Journal 450 (1965).


"OPPOSING CERTIORARI IN THE UNITED STATES SUPREME COURT", 61 Va.L.Rev. 197 (1975) (referenced in Stern & Gressman, supra, at 388 n.112, and in Wright, supra, at 551 n.23).
"THE UNCONSTITUTIONAL CONVICTION OF 'BABY'"*, Yearbook 1978 of the Supreme Court Historical Society at 68.


"PUNITIVE DAMAGES", A Plan to Improve America's System of Civil Justice from the President's Council on Competitiveness (National Legal Center for the Public Interest, November 1992, at 75).


"DIFFERENCES OF OPINION", The American Lawyer May 1995


"PUNITIVE DAMAGES," in A Plan to Improve America's System of Civil Justice, from the President's Council on Competitiveness, 1992, p. 75.

Author or co-author with Allen Snyder of the following articles in the Legal Times of Washington:

"Breaching Secrecy at The Supreme Court -- An Institutional or Individual Decision?" (June 12, 1978, p. 6).

"Are Specific Guidelines Needed to Protect Justices' Confidentiality at Supreme Court?" (June 19, 1978, p. 24).


"Federal Bar Admissions Tangle Raises Questions" (Feb. 5, 1979, p. 11).
"Herbert' Heightens Libel, Discovery Dangers" (May 7, 1979, p. 34).

Co-Author with Elliot M. Mincberg:


Co-Author with James G. Middlebrooks:


Co-Author with George W. Mayo, Jr.:


Co-Author with Lisa A. Hook:


Co-Author with John G. Roberts, Jr.:

"New Rules and Old Pose Stumbling Blocks In High Court Cases" (Feb. 26, 1990, Legal Times of Washington, p. 22)
Robert H. Kapp

Columbia Square
555 Thirteenth Street NW
Washington, DC 20004
202/637-8611

March 9, 1934
Chicago, Illinois

University of Michigan Law School. S.J.D., with distinction, 1958

Associate Editor, Michigan Law Review

Wharton School of Finance & Commerce, University of Pennsylvania. B.S., Economics, 1955

Trial Attorney, Tax Division, United States Department of Justice (Attorney General’s Honor Program), September, 1958 - March, 1961

Partner, Hogan & Hartson, Washington, DC (joined firm March, 1961; admitted to partnership December, 1965; has served on Executive Committee of firm).

Principally federal taxation with some emphasis on tax litigation matters. Practice in recent years has involved heavy concentration on representation of universities, medical centers, research institutes, charitable organizations and other non-profit organizations in tax and other matters. Recent experience in international commercial arbitration.

Managed government’s valuation case as Special Counsel in Rail Reorganization Act Cases.

Associate Professorial Lecturer in Law (Taxation), The National Law Center, George Washington University, 1970-1975

National Co-Chair, Lawyers’ Committee for Civil Rights Under Law (1983-1985); Board of Trustees (1976-present); Member, Southern Africa Project Subcommittee (1978-1994)
Co-Chair, Washington Lawyers' Committee for Civil Rights and Urban Affairs (1979-1981); Board of Trustees (1973-present)

Chair, American Civil Liberties Union of the National Capital Area (1990-1992); Board of Trustees (1982-1994); National Board (1993-1995)

Chair, International Human Rights Law Group (1986-1989); Board of Trustees (1979-present); currently Executive Committee

International Election Observer Missions: Namibia (1989); South Africa (1994)


Board of Directors, Higher Achievement Program (an inner-city tutoring program) (1990-1994)

Advisory Board, International Legal Studies Program, Washington College of Law, American University

Visitor's Committee, University of Michigan Law School

Advisory Board, Transnational Arbitration Association

Legal Officer, International Commission of Jurists, Geneva, Switzerland (while on sabbatical leave, Feb. 1-July 31, 1978)

Consultant, National Legal Aid and Defender Association, regarding study of private law firm poverty-area neighborhood law office (Piper & Marbury of Baltimore, Maryland) pursuant to Ford Foundation grant. The results of the study are published in Ashman, The New Private Practice (NLADA, 1973).

Member, Area I Planning Committee, Montgomery County Public Schools (1975-1976)

District of Columbia Bar: Gender Bias Study Committee; Family Law Task Force

1992 and 1996 Presidential Campaign Activity: Provided legal advice to Clinton-Gore Campaign on various tax related matters

Admitted to practice:
Illinois, 1958
District of Columbia, 1961
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson, L.L.P. on the 19th day of March, 1996, shortly after noon.

Mr. Kapp: Barrett can you just state your full name and your date and place of birth?

Mr. Prettyman: Elijah Barrett Prettyman, Jr. June 1, 1925.

Mr. Kapp: What can you tell me about your ancestral background?

Mr. Prettyman: Well, as I understand it, a Mrs. Forrest came over here from England in 1608 and settled in Jamestown, Virginia, and a John Prettyman settled in St. Mary’s County, Maryland in 1634. And I think they’re the earliest known ancestors we had. My parents later went back to England and discovered a small town (whose name escapes me) where our ancestors came from.

Mr. Kapp: Now what about your grandparents. Did you know them?

Mr. Prettyman: Yes. When I was quite young I did know them. My Grandfather on my Mother’s side was a doctor. He had been a farmer but went to medical school, became a doctor. His name was Dr. Henry Hill. And they lived in Baltimore and he was quite a character. I remember that when I was quite young, he would tell everyone he was going to take me bowling, and we’d go off and see Jean Harlow movies. [Laughter] So, I mean, he was really that kind of a guy; he
just had a great sense of humor and he was kind of a cut-up. On my Father’s side, it was quite different because my fraternal Grandfather was a Methodist preacher and his wife had a rather stern visage and he was a very serious man. I used to love to hear him preach because he had a very effective manner. He would begin his sermon in, not a loud voice but a strong voice, and I didn’t realize this until years later because I just didn’t notice, but as he got further and further along in his sermons, his voice would get lower and lower until at the end everybody in the church was leaning forward in the pews trying to hear, and it was very effective. I mean, it was like seeing a stage play, it became quite emotional, so I used to love that. So I knew, briefly, my Grandparents. I remember, for example, sleeping on the porch at my Grandfather Hill’s place in Baltimore and hearing the ice trucks come down the streets -- the old trucks that used to carry ice to the various houses -- that’s a memory I carried with me because of the distinctive sound.

Mr. Kapp: Did you visit your Grandparents from both sides with any frequency?

Mr. Prettyman: I suppose in today’s terms it would not be frequent. But in the early days because of the locomotion, the difficulty of travel, even going out to Rockville which is where my Grandfather lived (the preacher Grandfather) for quite a time, we’d have to make a special trip on Sunday afternoons in the old Model-T Fords with what do you call that thing in the back that opened up -- the rumble-seat. Anyway, my sister and I would sit in the back there, and we’d all
drive up to Rockville. But it was like a full half-day trip to go up there and get back again. Going to Baltimore was even more of a trip. So we would go to Rockville every few weeks and Baltimore not as often, just because of the difficulty of getting there.

Mr. Kapp: I didn’t ask you where you were born.

Mr. Prettyman: I was born here in Washington, D.C. at Garfield Hospital, and interestingly South Trimble, who is a local attorney and a friend, his mother was in the hospital at the same time as mine, both of them having children. So I am a few days older than South, which he of course kids me about all the time. I might add, thinking about my Grandfather, I neglected to mention that he (Grandfather Prettyman) was Chaplain of the Senate during Woodrow Wilson’s time, and my Father was a great admirer of Woodrow Wilson. I have no idea whether that was totally independent of my Grandfather’s service or whether it was connected, but I was always taught that Woodrow Wilson was a great hero.

Mr. Kapp: And indeed he was. [Laughter]

Mr. Prettyman: Yes.

Mr. Kapp: Just to talk a bit more about your Grandfather Prettyman. Did you have discussions with him at all about his view of religion or his religious philosophy or did he do any proselytizing? [Laughter]

Mr. Prettyman: Teaching, I would call it teaching. Sometimes. I must say that it didn’t take very well. I didn’t pick up on it very well. I do
remember, however, a near-death bed scene when he was really dying and I went to see him and he told me, you know, to be good and to do good things and to do them in the eyes of God and so forth. So that impressed me because of the seriousness of the scene, the occasion. But the other talks that we had were not in any depth, really; he was simply expressing his strong religious beliefs, and my Father had them too and also expressed them as I grew up.

Mr. Kapp: Can you tell me anything about the relationship between your Grandfather Prettyman and your Father?

Mr. Prettyman: Surprisingly, very little. I had the impression that there was deep affection and respect on both sides, but neither was terribly demonstrative so there was not a lot of, you know, hugging and saying loving words and things of that kind. They seemed, perhaps it was simply the times, but there was less demonstrative love than perhaps you might expect now. But I certainly never questioned their deep allegiance to each other, and certainly my Father always spoke with the utmost, utmost, respect for his Father. As a matter of fact, to be honest, it's very much like my own feelings for my Father, complete respect.

Mr. Kapp: Were your Father and your Grandfather in regular or frequent contact as you were growing up?

Mr. Prettyman: I have only the vague impression that they were but I don't remember everybody dropping in on everybody else all the time or anything of
that sort. I have the feeling that my Grandfather followed my Father's career very carefully, but I really can't pinpoint that in terms of how often that happened.

Mr. Kapp: Maybe you ought to give us the names and dates and places of birth, if you know them, of your own parents.

Mr. Prettyman: I don't know them. My Mother was born in Baltimore and my Father in Lexington, Virginia.

Mr. Kapp: And your Mother's name was?

Mr. Prettyman: Lucy Hill.

Mr. Kapp: And your Father's name was?

Mr. Prettyman: E. Barrett Prettyman.

Mr. Kapp: What can you tell me about your Mother?

Mr. Prettyman: My Mother I remember mostly as having a great sense of humor. She was very funny, she looked at things from a humorous standpoint and she had very close friends, all of whom really cared for her a lot because she was so much fun to be with. But she never graduated from high school, she never went to college. She became a nurse by going to nurses school and I think she always felt that lack of education, much more than she should have. I would kid her and tell that it was ridiculous and for example my four years at Yale had not really taught me very much. [Laughter] I could as well have spent them elsewhere. But she always felt that she was essentially uneducated and of course becoming a nurse was not easy in those days and she worked I understand twelve
hours straight on many many occasions and she was proud of that. But she still felt that she had missed the tutoring of basic education, and some books she felt she did not understand because of that lack of education.

Mr. Kapp: Where was the family home as you were growing up?

Mr. Prettyman: I went from Garfield Hospital in D.C. to 37 West Irving Street in Chevy Chase, Maryland, and that’s where we spent a long period of my early childhood. We have movies of me on the sidewalk with a Model-T Ford there and me just barely walking, just toddling, and I actually remember growing up there pretty well. I can see my room facing Irving Street and I can see my desk and my bed. I remember that pretty well. My first friend in the neighborhood was George Ferris, whose father began Ferris & Company, and George is now the senior person there. And another close friend who remained a friend during high school lived just a few doors up, and that’s George Goodrich, who later became a judge on the Superior Court and has only in recent years gone on senior status.

We would go to the movies every Saturday. I think it was a quarter. And you’d see previews and cartoons and news and serials that showed every week like the Green Hornet and so forth [Laughter], and finally you’d get to see the movie. We’d sit in the balcony and throw popcorn on the people below, and we did the usual things that you did growing up. And we’d all come out with headaches. I also remember one particular incident which remains very clearly in my memory. There was an elderly couple up the street that we didn’t like, they scared us, they
were very serious and they looked kind of strange, and they never had children and
we just, we didn’t like them without understanding why, exactly, and I remember
one Halloween we got all of the leaves in the neighborhood and after dark we put
them all on their lawn, and the next morning when we got up they were all on my
lawn. They had moved them back. They knew exactly, [Laughter] they put their
finger on who had done it, and that remained very vivid in my memory because I
thought they were so smart to be able to detect right away who the principal
evildoer was. [Laughter]

Mr. Kapp: Was the Irving Street house the family home all during
your parents’ lifetime?

Mr. Prettyman: Until I was about sixteen, and then we moved to
Woodlawn Avenue in Kenwood, Maryland.

Mr. Kapp: And your parents were still both alive when you made that
move?

Mr. Prettyman: Yes.

Mr. Kapp: Tell me a bit about your siblings.

Mr. Prettyman: I have one sister, Courtney, whose married name is
Paddock, married to George Paddock. She is six years older than I am. She’s still
alive, she lives in Evanston, Illinois, just north of Chicago. George is in the
insurance business. They have never had children, and Courtney and I have been
very close, particularly in the last twenty years. When we were young, because of
the disparity in ages there was a certain amount of competition. I was always making fun of her boyfriends and stealing her books that had pictures of movie stars in them and things like that. We once had a big fight where I kicked one of her teeth out. But we weren’t enemies, we just had the normal conflicts that you have when you are kids and particularly when you are a few years apart. I really couldn’t understand the stages she was going through, and she didn’t have a lot of sympathy for the stages I was going through. [Laughter] But even though we are very different and have different interests and lead very different lives, we are very, very close, we talk all the time, and it’s a wonderful relationship. And when we get to it I will give you an example of an incident during the War that was quite memorable to me, relating to her.

Mr. Kapp: Just, maybe, to return for one more moment to your Mother. Would you describe what influence you think she had on your life and on your choice of profession. Whether she had any impact on that in any way or how you practiced?

Mr. Prettyman: I think less of an impact than my Father. She impacted primarily I think in terms of personality, a certain devil-may-care attitude. I just enjoyed her a lot. I thought she was kind of neat to be around, but other than encouraging me in every way and really not standing in my way, she said no when I was about to be bad but she did not put on the brake. I remember, I guess we’ll talk about this later, when I was standing on the bridge at Ocean City
about to hitchhike across the country, and she and my Father were there, and I know
now that they were scared to death, but they never said a thing, they acted like it
was going to be a really good time for me, and so she did not stand in the way of
things I really wanted to do.

Mr. Kapp: At what age did that hitchhiking incident occur? How old
were you?

Mr. Prettyman: That was in 1946, the year after I came back from the War.

Mr. Kapp: Aside from what you’ve mentioned about your
Grandfather Prettyman, can you tell me what role religion played, if any, in your
family life?

Mr. Prettyman: Well, it played a strong role early on because we
went to church every Sunday and I went to Sunday school, and there was always my
Grandfather’s influence. I have to tell you that it became less significant as time
went on, so that I very seldom attend church now. It was almost as if I had a
reaction to so much religion. I reached a point where I felt I was not getting that
much out of the sermons and in some respects I regret that, but that’s just the way it
happened to develop.

Mr. Kapp: At what time of life did that occur?

Mr. Prettyman: I think certainly around the deaths of my parents, if
not slightly before.

Mr. Kapp: And those occurred when, Barrett?
Mr. Prettyman: My Father died in 1971 and my Mother died a couple of years later, in 1973.

Mr. Kapp: Maybe we could return here to some of your early memories. I think it would be helpful if you would tell us a bit about your earliest memories of schooling, elementary schooling in particular, if you have such memories.

Mr. Prettyman: The first school I really remember was Somerset School in Somerset, Maryland, halfway between Chevy Chase and Kenwood. And the principal thing I remember there is that one day one of the teachers, a female teacher, got mad at one of my young classmates and picked him up by the hair, and that impressed me tremendously, as it did everyone else. But I really remember very little about that school, other than the usual playing in the playground and trying to absorb mathematics and all the rest of it. Then I went to St. Albans, and I boarded part of the time but not for very long -- I think that was mainly when my parents were away on trips. And of course I remember that much better, much more clearly. At St. Albans I was not much of an athlete; I tried to play end on the football team but I was awfully light, and I tried to play soccer but I wasn't very good at it; played a little bit of tennis. Essentially I was into writing and drawing. I was managing editor of the St. Albans News, I did some writing and drew the cartoons for the yearbook, and so I was much more into that side of things. My two best friends at St. Albans were George Goodrich and Jim Birney, and we were
known as the “threesome” because we always stuck together. I had a lopsided time at St. Albans because I was into all kind of devilment and would get thrown out of class sometimes, and one term I had fifty-eight demerits, and if you get sixty you’re expelled. I had about a week to go, and Jim and George accompanied me around school all day to prevent me from getting the last couple of demerits so that I wouldn’t be expelled. [Laughter] And I finally caught onto the system and was elected a prefect who gives demerits rather than gets demerits, so I beat the system that way. But I had a wonderful time at St. Albans. I would get a lot of A’s and F’s, which drove Dr. Lucas nuts. He was the headmaster, an ex-Marine preacher who just despaired of me because he said I wasn’t concentrating and giving my all and doing my duty, all of which was completely true.

Mr. Kapp: When you were at Somerset School, how did you perceive yourself as a student, if you remember. Did you think of yourself as a good student or poor student?

Mr. Prettyman: I don’t really remember. I remember a general feeling that I was never a top-flight student, at least until I got to Law School, although I did well at Yale, I mean I was on the Dean’s List in my last year at Yale, but I had the impression that I did things that I really enjoyed doing, that I was interested in, and my attention flagged on those things that didn’t seem to have much relation to me or to my life. I was terrible in languages, for example. I took six years of French and could hardly say anything. But I did do well in Math for some strange
reason and I did extremely well in English, writing, literature, that sort of thing, so it was really what captured my interest.

Mr. Kapp: What role did your parents play in your earliest education? For example, in your elementary school education? Were they active in regards to your education? Did they talk to you about it?

Mr. Prettyman: Very. They were very concerned. They would go in and have conferences with Canon Lucas. They would have long talks with me about my future, how I was not going to become anything if I didn't settle down. They were very concerned. They were very supportive. I think they had between them a nice attitude, and that is they were obviously loving, they cared, they wanted the best for me, but they weren't going to put up with just anything I wanted to do. And I had, you know, I had to work. [Laughter] So to the extent that I didn't succeed, I don't think it was their fault in any way. It was purely my own untoward spirit.

Mr. Kapp: You grew up in Depression times and came to adulthood shortly after the Great Depression. What do you recall about the Depression and the impact of that on your family and discussions that your family may have had during that period -- do you have any recollection about any of that?

Mr. Prettyman: No. It's interesting that my sister does, and she has stories about how difficult times were and the fact that they could barely make ends meet. But I wasn't aware of it at all. To me it was just a perfectly normal, regular
life with no deprivations. I just wasn’t aware of it. We ate three square meals a day, you know. Had a nice house over our heads.

Mr. Kapp: Can you tell me about your reading interests in elementary and secondary school?

Mr. Prettyman: I loved the normal things, Treasure Island and Les Miserables I remember. I loved S.S. Van Dyne, the mystery stories, I loved Kidnapped, Treasure Island, The Three Musketeers. And earlier than that, I’m sure I read the childhood mystery stories. I don’t remember the names of them but I always loved mysteries and I’m sure I read those when I was young. Like the Hardy Boys, books that like. But I read quite a bit.

Mr. Kapp: It was a significant part of your early life would you say?

Mr. Prettyman: Yes, I would say so.

Mr. Kapp: And when, do you recall your earliest experiences of writing?

Mr. Prettyman: Oh yeah, I still have my themes that I wrote in high school and probably earlier than that. And this is the kind of thing my Father would do: I would take the comic strip Dick Tracy or Dan Dunn and I would concoct a story and I would draw the figures and write above them and I’d have a new sheet -- just as you do in a comic strip -- I’d have a new sheet for each scene as the plot developed. My Father collected those and put them into book form. I still have two books that I wrote when I was God knows how old, I mean, maybe ten or something.
But that's the kind of thing he would do to encourage me. And I took six years of art when I was living on Irving Street in Chevy Chase. There was a woman up the street who taught art, and that had a big impact upon me, I loved art work. I was never terribly good at it but I enjoyed it. My Father knew that the art and the writing combined with the reading were important, and so both he and my Mother both encouraged me to do that as much as I wanted to.

Mr. Kapp: Can you describe your travel experiences as a youngster?

Mr. Prettyman: I was never on an airplane until World War II. Part of that was probably because my Father had a fear of enclosed places, and so he never went on an airplane in his life.

Mr. Kapp: His entire lifetime?

Mr. Prettyman: Yes. When he went on senior status he got a letter which he showed me with some amusement from the General Counsel of the FAA, and it said in effect, "We're sorry to see you leave. You'll be interested to know that we keep statistics and you've written more air law than any other Federal Judge in the history of the country." [Laughter] And my Father said, "My God, I hope this doesn't get out," and I said, "Why," and he said, "Because I've never been on an airplane in my life." So we would go either by car or by train, and even if he sat on the Ninth Circuit in California by designation, he would take a train. So we saw quite a lot of trains. But during the summer, partly I think because of finances, we always went to Ocean City, Maryland. I was at Ocean City before I was born.
because when my Mother was pregnant with me we were in Ocean City, and we went there virtually every summer. Now those were the days when of course you did not have a bridge over the Bay but rather old ferries, so you’d go down and you’d wait in these long lines, miles long, and finally drive on to the ferry and that was a 45-minute ride across the Bay, and then you’d get off on the other side and drive on. So you didn’t just run down to Ocean City every weekend [Laughter], it was a big trip down and we stayed for at least a month and then we’d take that long trip back. And years later when the ferry was still going and I would hitchhike down to Ocean City, I would hitchhike to the end of this long line and get out of the car, walk a few miles, get on the ferry, and hitch my next ride on the ferry and get down hours before the guy who gave me the first ride. [Laughter]

Mr. Kapp: Did your family have a home down there?

Mr. Prettyman: No, never did, which is interesting because they knew they were going every summer. My sister thinks that that’s partly because of finances, they just never had enough to purchase a home, and perhaps partly because of the Depression. My Father had a fear that the ocean would come up or that the roof would cave in in a storm or something, and he just didn’t want that responsibility.

Mr. Kapp: And you’ve continued yourself to go to Ocean City with some frequency?

Mr. Prettyman: Yes, I go summer and winter.
Mr. Kapp: And you now own a house down there or no?

Mr. Prettyman: I own a condo. I owned a house which I gave to Noreen McGuire.

Mr. Kapp: Still on the subject of traveling. You mentioned earlier that you had taken off from Ocean City on a hitchhiking trip. Can you tell me about that?

Mr. Prettyman: Yes, it was after the War and I just had that urge to get going and see the country, so I had a little bag, had a few toilet articles, a change of underclothes in it, it was a very small bag, and I got out on the bridge at Ocean City. I kept a diary of it which I still have. I'll never forget the first ride. This old farmer gave me a ride in a jalopy and we were put-putting down the road, and he said, “Where are you going?”, and I said “San Diego”. [Laughter] He looked over at me and thought I was absolutely out of my mind. [Laughter] Dropped me off about a mile down the road. But, yeah, I hitchhiked across country in the summer, went through the hottest parts of the United States, you know, Kansas, St. Louis. I didn’t have much money, so I slept in the park sometimes. I slept in “inside,” closed hotel rooms that didn’t have any windows because they were on the inside of the hotel. But they would get so hot that you had to leave the doors open because otherwise you’d suffocate. Sometimes you’d wake up and there’d be a drunk on the floor of your room who had wandered in during the night. [Laughter] But I went all the way out to Salt Lake, down to San Diego, up through California
on the West Coast, back through Canada, through Massachusetts, Connecticut and
down again. Took about five weeks. Had some wonderful adventures.

Mr. Kapp: Why don’t you tell me about those?

Mr. Prettyman: Well, one I remember particularly. I was on the other
side of Denver just before the mountains begin. I had been standing in the rain for a
long time, and this guy stopped and opened his window. “Do you drive?” And I
said, “Yeah.” He said, “Okay.” I got in and he said, “Now we’re going to Salt Lake
City, I don’t want you to stop. We’re going straight on through,” and it was then
just getting dark and he climbed into the back seat. The next thing I knew a bottle
came out the window past my ear, and I looked back and he was out cold. So we
drove up into those mountains, and it got to be the middle of the night, practically
no cars, totally black, and I made a sharp turn and the back right tire went off the
road and the whole car went around and straight down. And I thought I was a
goner, but when the car got quite a ways down it crashed into some heavy brush, so
it was sitting there facing almost straight up. And way up there you could see the
road. So I got out and tried to get this guy awake and I couldn’t wake him. I was
slapping his face. Finally, he came around and I’ll never forget the look on his face.
He was still about half-zonked. He gets out and he looks at me and he looks at his
car and he looks up at the road, he looks at the car, he’s rubbing his eyes.

[Laughter] He obviously is thinking something strange and horrible is going on.

Well, anyway, I climbed up to the road and finally flagged down a big truck, and the
driver rolled the back of the truck over the edge of the road and lowered a hook way down, and it reached the car. We put it under the car and he pulled it up to the road.

And this guy, the former driver of my car, said, “Well, you don’t know what you’re doing, and he gets into the front seat and instead of putting it in forward he puts it reverse, and we almost went right off the edge again, just barely stopped in time. So he said, “Okay you drive,” and by that time I was very awake and drove the rest of the way. I was with him two or three days, until we got all the way down to San Diego, as a matter of fact, and he was drunk the entire time, absolutely bombed, and we finally got to his house, and the little wife was there on the porch, and he invited me in for a meal before I took off again. I went in and it quickly became apparent that she was very religious, very straight, and she did not have a clue that he ever drank a drop. In fact, it was clear from a few things she said that she had the impression he had never had a drink in his life. [Laughter] That’s one memory I have.

Another one is that I got violently ill, food poisoning, around the Great Lakes, and I was in a room that fortunately had a telephone. And I called down in this creaky old hotel and they got some doctor over who obviously was on his first case [Laughter], he was so nervous, and he came in and thought I was dying, and he gave me some medicine. I was there for a couple of days, just staggering downstairs to get some tea and crackers and then staggering back up again and being sick again. It was a really terrible case. Ptomaine, I’m sure. Anyway, I kept going.
Mr. Kapp: You had something more you wanted to say?

Mr. Prettyman: I just forgot to mention that in my early friendship with George Ferris, we had the P&F (Prettyman and Ferris) Shoeshine Company, and we had a wagon with all of the paraphernalia on it to shine shoes. We would go from door to door and solicit shoes and most of the neighborhood people gave us shoes, and right there on the sidewalk in front of the house we would shine all these shoes up and give them back. I forget what we charged, like ten cents. And we were doing just great until two girls our age came along, and they went into competition with us [Laughter], and they did it for less and did it better and they were driving us out of business. So finally all four of us agreed to split up the neighborhood. They would do one side of the street and we’d do the other, and of course my Father got a great kick out of that because he said it was clearly an antitrust violation, [Laughter] and we all ought to be ashamed of ourselves for dividing up the territory. [Laughter]

Mr. Kapp: Tell me about your earliest recollection of having dreams and aspirations and ambitions for your future and what those may have been.

Mr. Prettyman: I did not have a clear idea at all of what my future would be. I had a feeling that it might involve writing of some kind, simply because I liked to do it and I was getting good grades on themes. I enjoyed using my imagination, I enjoyed the writing. But whether I was going to be a teacher or what, I just had no concept at all. You have to remember that I went directly from
high school into the Service. Certainly in high school I was having no real dreams of a future because the War had begun in '41 and I was graduating in 1943, so for the whole last two years we were thinking of nothing except the service and what was going to happen to us there. We were not thinking about future careers because we didn’t know whether we were going to have any future. So during the last two years of high school when we would normally be thinking about our chosen profession, we were not thinking about that at all.

Mr. Kapp: Why don’t you tell me about your military experiences?

Mr. Prettyman: I graduated in June of 1943. I went into the Service in August. I was briefly at Johns Hopkins University at one of those programs that’s supposed to get you ready for officer candidate school. I didn’t like that. I got out of it and got right into the Infantry, which my parents thought was absolutely insane to do, but you know in those days the attitude was so completely different. I was 18 years old, we were all caught up in the War and the fervor of getting over there and killing Germans. It was just something that got hold of a lot of us, me included, and I did not want to go to Officer School; I wanted to be in the Service that would most quickly get me over there, and that was the Infantry. So I went into the Infantry, trained at Fort Benning, Georgia, and was...

Mr. Kapp: You were how old then?

Mr. Prettyman: I guess 18 when I got out of high school, does that add up right? 1925 to 1943 -- 18. Yes. I was 18. And training camp was very rough.
Went over to England on a ship that was not fun. *Laughter* There were so many troops on it that we had to switch from being on deck one time to being below deck the other time, and then we'd switch around again, and when we were below deck everybody was sick. Some of the soldiers who were there were having serious second thoughts about going into combat, so we had a couple of people who shot themselves in the foot, the hand, whatever, to get out of service.

We landed near London and went by truck to an encampment site, where we continued our training, waiting to move on to France. At one point headquarters got the idea that gliders would be needed, so we had a crash course in how you get yourself and all your equipment in and out of them. Later, the GI's who actually went over in those gliders were sitting ducks, and a lot of them were shot down, so although I trained for that, I never had to fly gliders.

It was during this time that my sister, who was in the Red Cross in Scotland, arranged one night for her to come to England. She got some kind of special pass and came all the way down, and I walked -- it seemed like about fifteen miles -- to this little town that we'd agreed to meet in, because I think it was the nearest town to where I was training. And we got there very, very late at night, and it was a tiny inn, and the landlady was so impressed with what we were doing that she put the last charcoal she had on the fire, and my sister and I met there and we wrote a letter to my parents. One of us wrote the whole first page, and then when you turned it over it was the other one of us, so you couldn't tell that we were
together until you got to the second page. \[Laughter\] But that was a very emotional time because neither one of us knew what was going to happen to the other, and certainly it sealed the love and friendship that we’ve had for each other ever since -- not that it was lacking before, because we obviously did this to see each other, but it certainly gave us something in common that we’ve always remembered and my parents were thrilled to get the letter. And then I had to walk all the way back, and as I recall I got back about dawn and we had something like a 20-mile hike that day. \[Laughter\] I was in no shape for about a week. But anyway, this was during the period of buzz bombs so I experienced that for quite a bit, which is an unexplainable sensation, those bombs that you would hear coming, and then there would be no sound and you had no idea where they were going to land. Anyway, finally they put us on these landing craft and we went over. I was in the Ninth Army, 84th Division and just a private, and we went over and landed on Normandy Beach, which fortunately had been taken \[Laughter\] sometime before but nevertheless....

Mr. Kapp: You were crossing the Channel at that point?

Mr. Prettyman: Right. But I acquired through that landing the most extraordinary respect for those people who had taken that beach, because I still don’t understand how they did it. The cliffs overlooking that beach and the fortress that that place represented were amazing, and I just don’t see after being so seasick and landing on that beach how in the world they ever got up there and took it. I
still think it's a miracle. And years later I visited that cemetery several times and was very, very moved by it. We certainly owe those people a lot. Anyway, we moved by truck across most of France, getting bombed here and there, but we didn’t hit our real combat until we got near Aachen, inside the German border. That was the first time in the middle of the night when our truck stopped that I heard German voices, people in the town. So we took Aachen and then moved out beyond it. It was very interesting. I have no concept of time at this period. I have no idea how long this was. I remember we would go out on patrol, which was absolutely frightening. I was what they called a sniper scout, which meant that I carried a carbine and would be out in front of the squad. I thought it was to rout out the enemy but I think now it was to draw fire. [Laughter] I was expendable, to say the least. And I remember particularly when we would go out on patrol, everybody would try to avoid that duty because it was so dangerous. But there was one fellow -- big guy who’d been a cop in San Francisco -- and he volunteered for all these patrols. It turned out he just loved to kill people. He had a semi-automatic and would like cutting people in half. That’s a mentality that I have seen since, but that’s the first time I’d ever seen it. Very frightening. Good man to have on your side. [Laughter]

Anyway, this went on for some time, and finally one day we were out in a field and I think we were lost. I don’t think we were supposed to be there. There was a huge field and way over beyond were trees, almost impenetrable trees,
and we were walking along and rifle fire started, and the first shot went right by me and hit the guy in front of me. I remember he was from New Jersey and I remember that he had told me he had a family, a wife and some kids. We all dived for holes that the Germans had built and left, and I remember that guy -- we couldn’t get to him and he just died slowly. You couldn’t crawl out because by now everything was coming in. This was in November. My hole was partly filled with water and it was very very cold, and I don’t know how long we were out there, but at least several days, and I remember when we woke in the mornings we’d yell around to see who was left. I remember particularly there was a very nice guy who was in one hole over from me, and he was there until the last day and then he didn’t answer. But anyway, when it finally let up I crawled out, and I really didn’t realize there was anything wrong with me. I think I was just so frozen and in such shock, but I couldn’t walk, and they dragged me back and cut off my boots and my feet were frozen. So they took me back, which turned out to be the thing that saved my life, I mean it was wonderful that it happened because my unit was mostly destroyed later in the Battle of the Bulge. That outfit went on to the Battle of the Bulge and was virtually wiped out. So anyway, they put me in a tent, I remember it so well, and a nurse came in and she started talking in a very soothing voice. I was lying on a cot, she kneeled down and she took my hand and she started talking to me in this very soothing voice, and I broke into tears, just absolutely hysterical. I must have cried for an hour, just everything coming out that was all pent up, but I
had just been so scared for so long, under tremendous pressure and not really realizing it, because you’re just thinking about the next moment, how am I going to get through five minutes from now, so you don’t realize that you’re bad off. She knew exactly what she was doing because you got a lot out of your system.

And then they put me on a train which went through Holland and Belgium back to Paris, and I was in a hospital, a unit, that was for GI’s with frozen feet. And you’d lie in bed with your feet uncovered, and they’d come in and stick pins in you to see if you had any feeling, and they were always taking these guys out to cut their toes off or cut their feet off. Your feet were black, and so you didn’t know whether you were going to lose your feet or not. And they told me later that I came within half a day of losing one foot. But eventually the shell cracked, came off, and I still had my foot. So I lucked out again. Then I flew on my very first flight -- I still couldn’t walk -- they flew me to London. I was in a hospital there. They flew me from Paris to London, and I was in the London hospital. The reason that was so interesting was that they had a unit there for people who had sort of gone over the edge, and they had a little band that didn’t have a drummer. And so they got me out to play the drums, even though I couldn’t work my feet too well.

[Laughter] I played the drums -- you know up, above but not the bass -- and it was really strange because everybody in the band was cuckoo except for me. And all of a sudden right in the middle of a song, somebody would fly off the handle and drop his saxophone and run off. [Laughter] You never knew quite what was going to
happen.  *Laughter*  Then they sent me back to the U.S. on a hospital ship, which was wonderful, completely different from the ship coming over.  *Laughter*  We had room, they treated us well and we had good food.  That was a great trip.  And then I was in Camp Butner in North Carolina, so I was off my feet.  But anyway, finally I got out of the Service after close to nine months in the hospital.

Mr. Kapp:  Tell me what, if you can remember, what your attitude about that War was at that time.  Do you have a recollection of that?

Mr. Prettyman:  Well, it changed.  In the beginning I had this glorious concept that I was going, if necessary, to give my life for my country, and that the other side was made up of horrible people, and that I was on the side of right and justice, and I could hardly wait.  And then reality sets in.  And you’re frightened all the time so that you’re ruining your clothes, you’re sick a lot.  I only weighed 125 pounds when I went in, and God knows what I weighed by the time I got back to Paris.  I don’t know, but my guess is I’d lost all kinds of weight.  And what you find out is that the Germans are scared too, and they come from families.  They’re having the same frights and terrors that you are.  You find the reality of it is that it’s just a horrible, horrible experience.  Years later I experienced that again in Vietnam.  Very, very different war, but you find that there’s nothing glamorous about it, and there’s nothing good about it.  Which doesn’t mean that it doesn’t have to be done sometimes, I’m just saying it’s not fun, it’s not glamorous.  It’s just a horrible experience.  Having said that, I do honestly think I’m a better person and a
happier person for having gone through it, and I’ve said this a lot and really mean it, that in that hole, when I really thought I was gone, I remembered thinking to myself, if I ever get out of here by some miracle, I’m going to eat a lot of steak and drink a lot of beer and know a lot of women, and I’m just going to wake up happy in the morning because if I ever get out of here it will be a bloody miracle. And that has affected me. Not many days go by when I don’t think about that -- when I’m feeling down or lousy or have a cold like I do now, whatever -- I’m thinking hey man [Laughter], done a lot of living since I thought I wasn’t going to live at all, so it’s okay.

Mr. Kapp: What about as you look back on it do you have a view with respect to the righteousness or lack of righteousness of the cause?

Mr. Prettyman: Oh yes. I don’t think we had any choice. In the same way that I don’t second-guess Truman on the dropping of the bomb. I just think that there are some things you have to do when confronted. Now I don’t agree with all the times that our leaders have thought we were confronted. [Laughter] I mean, I did not believe in Vietnam. But in a situation like this, whether or not you think Roosevelt was trying to get into the war or not, the fact is we were attacked, we had absolutely no choice but to counter-attack, and I think there was no question but that Hitler had grand designs. I just don’t see any point where he would have stopped if he’d taken Britain. Maybe, but he and the Japanese certainly had grand designs so I don’t second-guess anybody on the fact that we had to fight that war.
Mr. Kapp: Is your thinking about that war affected in any way by the attitudes, whatever they were, that you developed during the Vietnam War?

Mr. Prettyman: To this extent, I suppose. Having been through that and seen that same kind of fear and bloodshed and wounding and killing visited upon a new generation, you want to make very very sure that it’s for a good cause, that it’s essential that you’re there. I think no one who’s been through it could possibly think that you want to do that except under the most extraordinary circumstances. And I guess I was never convinced of the extraordinary circumstances. Moreover, there was so much phoniness about Vietnam, which we can talk about later, that that was depressing too. The fact is that, at least in World War II, the reports were basically accurate; people were getting a slice of what was going on.

Mr. Kapp: Before the Vietnam War I think many Americans thought that America was always right in its decisions in respect to war. Our generation tended to think that way. Was your thinking about that affected by your view of the Vietnam War, would you say?

Mr. Prettyman: No, I don’t think so. I don’t think I assumed anything. I did assume it during World War II because I was young and I had the admirable view that most young people have, but I didn’t second-guess myself later on that. I always observed that in a war, we just plain had to fight. But I did not go from there to assuming that the United States necessarily was always right.
think I took each war in its own perspective. And that’s why I was always somewhat confused about Korea, because in a way I admired Truman for taking positive action at a time when it really looked like there was a threat to South Korea in a way that could impact us. I suppose it’s the same sort of thing as if China attacked Taiwan today. But at the same time, it’s difficult to put your finger on exactly what our interest was in Korea. So I’ve never had a definitive opinion about Korea. I can see both sides of that question, easily. I don’t feel the same about Vietnam.

This concludes the interview held on March 19, 1996.
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson L.L.P. on June 6, 1996.

Mr. Kapp: Barrett, you wanted to talk a bit further about the hitchhiking trip which we covered during our last interview.

Mr. Prettyman: Well, only to the extent that I did keep a diary of that trip, a fairly detailed one, and it shows on the last page where I summarized everything that the trip took me 34 days. I must have traveled close to or even over 6,000 miles. I spent a total of $154.05, which is an average of $4.53 a day, and that would have been for everything. [Laughter] I hitchhiked on 187 cars and 35 trucks, for a total of 222 vehicles.

Mr. Kapp: Think you'd like to take that trip again do you?

Mr. Prettyman: Never again. [Laughter] But I'm glad I did it once.

[Laughter]

Mr. Kapp: Can you tell us where it was that you went to college?

Mr. Prettyman: I went to Yale University, although I had been preregistered at Williams when I got out of the Service; everything was set for Williams. I even had my roommate assigned, but I suddenly found that the colleges and universities were somewhat short of students because the war was still going on, so I could get into Yale and I did.

-30-
Mr. Kapp: Can you describe the process by which you made your college selection?

Mr. Prettyman: It was very simple. I had aspired to one of the large ones -- you know, Harvard, Yale, Princeton, whatever -- but had assumed that I could never get in because my grades in high school were so scattered, a lot of A's and F's. [Laughter] But as I say, when I got out of the Service and was set to go to Williams, it wasn't that I had anything against Williams, which was a wonderful college, but I just thought I might be better off in a larger university. When I suddenly found that Yale would accept students because of the war situation who might not previously have been able to get in [Laughter], I just switched because I thought it would be better for me.

Mr. Kapp: When is it that you entered Yale?

Mr. Prettyman: 1945.

Mr. Kapp: And did you benefit from the GI Bill on that?

Mr. Prettyman: Definitely.

Mr. Kapp: I wonder if you would just talk a bit about your memories of your college experience.

Mr. Prettyman: I was in a strange frame of mind after the war. And I am very ashamed of the fact that I really did not take advantage of Yale. Whatever I didn't get out of Yale was entirely my own fault and not Yale's. There were plenty of things to do, wonderful things, such as the Yale Daily News and so forth, which I
did not do, and my only explanation is that until Law School I never really caught
fire at all. I did not have a deep and abiding interest in learning everything there was
to know about the earth. And I looked on Yale as a kind of a benefit of still being
alive, and I intended to have some good times. Which I did. I loved my senior
thesis, which was on the election of 1916 between Hughes and Wilson, and I got a
very high grade on that. I loved some of the English courses which involved
writing. But I didn’t love a lot of the rest of it. I joined Phi Gamma Delta fraternity.
I lived at Davenport College with my roommates. There were four of us in the suite.
We played a lot of pool [Laughter], drank a lot of beer, went to a lot of women’s’
colleges, and all around had a great time. But I honestly can’t say that I was one of
Yale’s finest products.

Mr. Kapp: How would you describe the course of studies that you
followed at Yale?

Mr. Prettyman: It was certainly not geared to the Sciences, which I
did not feel very confident in. I can’t remember all my courses, but I took courses in
anything involving Literature. I majored in History but took a lot of both English
and American History courses. I took Psychology. I took Sociology and an
occasional Science course. I may have taken Math but I really have no clear
recollection except in History, where I obviously had to do a lot of work to make
sure I got through with my main studies.
Mr. Kapp: Did you do much in the way of writing while you were at Yale?

Mr. Prettyman: Yes and no. I did my thesis, did a lot of research for that and spent a lot of time writing that. In my English courses we would write what really amounted to themes. Some stories, but nothing that was published, strictly for course requirements.

Mr. Kapp: Did you have any particular favorite authors at that time?

Mr. Prettyman: I read a lot and I used to even keep a list of those, but there was nothing very dramatic there. I tended not to read the Golden Age authors, Greeks and so forth. I tended to read the more modern stuff, just exactly what you would expect -- Hemingway, Steinbeck, Faulkner and people like that. And in that regard, I would pick up and read most anything that I could find. But I think all of the names you would know. They were never authors that I had found on my own or that passed in the night very quickly. I’m sorry I don’t have that list but it was quite interesting.

I was also into jazz and Rock and Roll. We had a number of jazz greats come to our fraternity house, and I would often hitchhike to New York City. So I saw and heard Billy Holiday, Sidney Bechet, Gene Krupa and Ziggy Elman knocking out “Sing, Sing, Sing” with Benny Goodman, Bill Haley, Lester Young, Helen O’Connell, the Dorsey’s, Frank Sinatra, and lots of other wonderful musicians and singers.
Mr. Kapp: Well I know that you've continued to have literary interests. That you've been active in PEN/Faulkner and I think you were President of PEN/Faulkner. Have your reading interests changed any since your days at Yale?

Mr. Prettyman: I think they've become slightly more sophisticated. I read some authors, like Cormac McCarthy, who is more difficult perhaps than some of the ones I was reading early on. And I think I can understand better some of the earlier ones -- Mark Twain, for example -- than I could then. But the thing I like the best is good writing, and that's always been important, more important to me than the story line. There's a very popular author today whom I cannot pick up and read two pages of because the writing is so bad, but he's very popular because he has an entertaining story. So for me, what gets me excited, what really galvanizes me, what makes me want to plunge ahead, is the beauty of the writing, and on that I can be brought to tears -- something that is extremely well thought out and executed.

Mr. Kapp: Well Cormac McCarthy is certainly someone who meets that description. Are there other people that you would think of in this connection?

Mr. Prettyman: Well, I always liked Katherine Ann Porter's material, and of course got to know her later. And I would put Eudora Welty in the same category as someone who if you read quickly would appear on the surface to write rather simply and construct a story that's easily understandable, but who under the
surface I have found in taking courses on her had all kinds of deep allusions and conflicts and turmoils going on that you don't catch right away. And that I like too; I like things that are not as self evident as they appear at first glance, or second or third glance. But you know, the whole subject of whom I like and dislike is rather complex in itself because I stumble upon things that occasionally intrigue me. I am just now reading "Snow Falling on Cedars," which has a good story and is well written but is not, I think, in the genius category in terms of writing.

Mr. Kapp: What about extra curricular activities while you were at Yale? Were there any others than drinking and chasing women? [Laughter]

Mr. Prettyman: Well, I can tell you one experience that will perhaps highlight the kind of things I was up to and that horrified my parents. My roommates and I, with the connivance of a few other people in our fraternity, went to a store and had a record made which we both sang on and talked into. And the record was a destruction of the Princeton football team, very scatological, and described how the team was going to be utterly smashed on the following weekend by Yale, and really had some pretty bad things to say about them. We went in several cars down to Princeton, arriving about 10 PM at night. We had a map and were able to find the Princeton radio station on campus. We went in and beat up the crew that was running the radio station, and tied them up and put our record on. We had figured that it would take quite a while for the Princetonians to react, giving us plenty of time to get out of there. [Laughter] But in fact they reacted
instantaneously and poured out of the dorms and caught us in there, and the only thing that saved us was that both the campus police and the city police got there very, very quickly and towed us off to the pokey, where we stayed for a few hours until everything was straightened out. In the meantime, we had painted blue Ys all over the streets and statues, so it took us a while to get out. But we got back to New Haven in the morning, and Red Smith wrote a story about it, which although it was in the New York Herald Tribune my family got wind of and wondered why, if I was getting such poor grades in certain subjects, I had time for foolishness like this. But we took great delight in that, and we thought it was well worth our time and effort. I remember that, and I do [Laughter] remember some parties at Brown and Wellesley and a number of other places, but as I say the real interest I had in college was in getting through the four years, passing with reasonably good grades, enjoying my senior thesis, and getting out, because I knew that nothing I was doing there was really going to prepare me for whatever it was I wanted to do -- which at that time I wasn't sure about.

Mr. Kapp: Did you come into contact with any teachers while you were at Yale who had any particular influence on you do you think?

Mr. Prettyman: You know I really can't say that I did. My first real teacher who meant anything to me was Mr. Ferdinand Ruge, who was at St. Albans and who I thought he was the meanest man who ever lived, and in many ways I hated him, but I quickly realized after I got out of school that he had been of
monumental importance to me, because he forced me to come in on Saturdays and rewrite sentences, sentences, sentences. He taught me grammar, he taught me the feel of writing, how to make things simple. He was a big, big influence in my life. My Father was another important influence and you could say another important teacher, because he did teach me at every step the importance of writing simply and carefully and clearly. The next teacher whom I remember very well was not really technically a teacher either, and that was a man on the Providence Journal where I went right after college. A fellow named Joe Kelly. I joined the state staff of the Providence Journal, which means that instead of working in Providence I worked in Woonsocket and Newport and Pawtucket. Joe Kelly was the manager of the Woonsocket office. He was just as tough as nails, and in the morning when I would get there and be thrilled to see a story with my by-line, he’d come in and walk by my desk and say, “Dangling participle in the third paragraph, Prettyman” [Laughter] and bring me right back to reality. Is it all right to discuss that next?

Mr. Kapp: Sure.

Mr. Prettyman: Although I only stayed two years on the Providence Journal, it was a thrilling experience for me and really, really got me going. In those days there was no union, and so your hours could be very peculiar; you could actually work eight hours and then immediately start another eight hour shift, and I sometimes did that. Not only that, but you took your own pictures much of the time on the state staff. That is, I would go around to cover a story and carry a
camera with me, and if I could get some good pictures and the story was good, I might even get a by-line for both, and especially if they were on the front page; you couldn’t do any better that that, I mean that was a great thrill. You learned to be imaginative, to think up your own stories. One Labor Day weekend when there was absolutely nothing going on in town, I hired a little two-seater plane, flew over the city, hung off the side, and took pictures of the empty town just to show it was empty. [Laughter] And once there was a monastery there where the monks spoke only to themselves, they didn’t speak to any outsiders, and I think perhaps they were not supposed to speak at all. This beautiful place caught on fire and virtually burned to the ground. I was one of the first people there. I had a little recorder with me, and I was actually able to speak to a few of the monks who were totally distraught and in tears and so forth, and that tape went onto the radio station. Things like that were happening all the time, and so it was just a wonderful experience.

The State Attorney General had declared that there was no mafia in Rhode Island and that the state police had diligently sought to discover where a few gambling operations were going on but had been unable to do so, and they were convinced that there was virtually none of that going on in the state. So the Providence Journal sent me (I grew a beard) [Laughter], and they sent me into Newport because they suspected that the center of the illegal enterprise was there. So I stayed in some really horrible room and just sat around for a while and then
began to ask questions. And finally I discovered that right in the harbor area there was a walk-up, a building that didn’t appear to have any identification on it or anything, and one night a fellow whom I’m gotten to know was going there to gamble, and so I followed him up the steps. And he rang and they looked out the peephole just like in the 1920s, recognized him, assumed I was with him, and let us both in. There was gambling all over the room. Every kind. And finally a door opened and a fellow came out and asked who wanted to throw the number for the day.

I immediately said I’d do it, and there were three big cubes, and I threw them out on the table and that became the number for Rhode Island for the day. Well, I could hardly wait to get back to a phone somewhere and call in this story. [Laughter] And this old hard-headed editor back in Providence said, “Well, Prettyman, that’s pretty effective but we want to make sure we get this straight. I’m going to send a witness up there and you do it again.” [Laughter] So I had to, and I really don’t know how we worked it out the second time, but I got us both in, and this time I knew the fellow was coming out the door so I was standing waiting and when he asked who wanted to throw the number, I said I did. I threw it again, and in the meantime we had placed bets all over Newport, horse bets, the numbers, every kind of bet you could think of in all of these little drug stores and shoe shine shops and everywhere, we had numbers all over the place, so after I threw the winning number, we went around cashing in our bets. Well, that story was page
one with huge headlines, and you know the Attorney General was running backwards all over the state, they were calling for grand juries, they had investigating teams, and so forth. Rhode Island being what it is, it took them probably at least six months to a year to recover from that and get back to normal.

[Laughter]

Mr. Kapp: Did you have a by-line on the story?

Mr. Prettyman: Yes, I did indeed. Not everything was as interesting as that, of course, but when you do those kinds of things, particularly when you're young, it's just very exciting. And I loved newspaper work. The problem was that I was thinking seriously of getting married, and I really was not making any money at all. As I say, it was non-union at that time and everybody wanted the job, so they could pay very low wages, and I, you know, was eating spaghetti three times a day, and I just figured I had to do better. So in consultation with my Father, we decided that if I became a constitutional expert I could go back to the paper and demand twice as much [Laughter] -- not that they would give it to me. So with that little gambit in mind, I decided to take one year at Virginia Law. I entered law school with the idea that I was going to stay for a year and then go back to the paper.

Mr. Kapp: Can we just go back a little bit here? Although that sounds like a pretty adroit gambit by your father I must say. How was it that you happened to select the job in journalism in the first instance?
Mr. Prettyman: I didn’t know what I wanted to do except to write. I thought it would be a lot of fun to be a newspaper reporter and to progress up the ladder in that game. I didn’t know a lot about newspapers, but it seemed to be challenging, it seemed to have something different going on, and youngsters have such a fear of being bored that that appealed to me a lot. I selected the Providence Journal because I wanted to stay in the East. I didn’t think I could get a job at something like The Times or The Post. I really had no background at all. I had not even been on the Yale Daily News. And the Journal had a wonderful reputation as a well-run newspaper, effective management. I didn’t want to go to a little tiny town, because I was concerned that nothing would happen. So this seemed to be a good choice. Big city -- which I didn’t end up in, of course -- but a state staff that was all over the state, a well-run, a well-written paper. I thought it was pretty exciting, and not that far away from home. So I could get home if I wanted to or had to.

Mr. Kapp: At that time, were you thinking about journalism as a career?

Mr. Prettyman: Yes. Which is interesting because my Father took the same route. He began as a reporter down in a small town in Virginia, Hopewell, covered that when the whole town burned down, and went to law school afterwards. I mean I didn’t deliberately follow in his steps, but, as it turns out, I really did; as it happened, I followed the same route he did.
Mr. Kapp: When you decided to go to law school for a year as you have just described, did you consider law schools other than Virginia or were you focused on Virginia from the start?

Mr. Prettyman: No. I thought about it, but I didn’t apply to other law schools, I don’t think. But I thought about other law schools. The reason I went to Virginia was that it had a good reputation, it was a good school, to begin with. I thought I had a better chance of making my mark as a big fish in a little pond than as a little fish in a big pond. I thought that even if I could get into Harvard -- I don’t know if I could have, or Yale, or whatever -- I could sink to the middle at least [Laughter] and never be heard from again. Whereas if I went to a good school but one that was not as prominent and had smaller classes, I had a better chance of making my mark. And whether I was going there for a year or three years, the one thing I definitely wanted to do was to make my mark in law school. I really wanted to be the best I could be. And that was the first time, as I mentioned before, that I ever really caught fire. I suppose you could say I caught fire on the Journal for that kind of limited work, and I am proud of the work I did there, but in terms of my ultimate career -- at the point where I would work at night, I’d work on weekends, and every other time -- law school was where I really got motivated.

Mr. Kapp: Well, you said that you started out with a view to just spending a year in law school and then returning to journalism. Can you tell me how your thinking evolved during that first year?
Mr. Prettyman: It only took about a week. By the end of the first week or two I knew I was stuck. [Laughter] I wasn’t going any place else. I got into the law very quickly. I found that I had gotten through osmosis from my Father and his friends so much that some of my classmates did not have, the language, the nature of the endeavor, the problem solving, I sort of took to naturally, even though I was having trouble with some of the more technical aspects of the law -- I wasn’t real hot on real property and some of those subjects. That was a technical difficulty. The tougher concepts I was having trouble with, but the basic run-of-the-mill law problems, the way a lawyer thinks, I found were easier for me. I had picked up so much before I had even given law school a thought from just growing up with my Father that I fell right into that, and I began enjoying it immediately.

Mr. Kapp: If you looked back on your law school years, are there particular courses and interests within law school that made a particular impression upon you?

Mr. Prettyman: Well, I loved constitutional law. I loved any of the courses that required writing themes or papers rather than answering yes or no questions. I got as quickly as I could onto the Law Review and became the Decisions Editor there, and I loved that because it was strict and it was hard and it taught you to be absolutely correct in every respect, and that is something I have kept with me and tried to teach youngsters today -- the importance of accuracy and how
judges, once they find that you misquote or mis-cite, lose confidence in your argument. Many judges go further than that and lose confidence in you, but certainly I got to understand on Law Review that before the judge even gets to your thought or your underlying argument, you have got to be absolutely accurate and correct in every respect, you’ve got to check quotes three, four times over. And I picked that up partly in my newspaper work, where Joe Kelly particularly would never let me get away with anything, but also in my Law Review work where that was taught to you.

Mr. Kapp: You haven’t talked about your interest in tax courses.

Mr. Prettyman: [Laughter] That’s a very good example of the types of courses I tried to stay away from. [Laughter] I think I had to take half a term of federal taxes, but I can guarantee you I got very little out of it. [Laughter]

Mr. Kapp: Can you talk about some of your professors at law school? Were there any who, in your mind, had a major influence on you or who you think of as mentors?

Mr. Prettyman: I had a very high view of my professors on the whole -- not every one -- but I particularly liked Hardy Dillard, who went on to an international court later and whom I played in the Libel Show for two years running. I thought he had a unique style of teaching where he was a combination of funny and serious and droll and witty. You listened and you learned. He taught contracts. I loved torts and I’m trying to remember, I’ve forgotten his name for the
moment, the fellow who taught that. But it was not so much the individual professors for me as it was the courses. As you say, I just simply knew I was never going to be a tax man, I just don’t think that way. I admire tremendously people like yourself who do like it. But different subjects are for different people, as you well know, and I knew that I was not going to be a tax man. So I could have a poor teacher in an exciting course and I would really enjoy it. I could have a very fine teacher in a tax course, let’s say, and I would not get a lot out of it. So I’m afraid I didn’t concentrate too much on the teachers. Certainly the Law Review work was wonderful, exciting, and very, very hard. I was also into moot court, and I moved up to the finals in moot court, largely because of my partner. We won the moot court competition in law school, and that was fun.

Another subject that was going to be very important in my life, but I didn’t realize it at the time, was that I got to know Bobby Kennedy, who was in law school two classes ahead of me. Bobby was the head of the Legal Forum. He was in charge of bringing the speakers down to the University, and if you knew Bobby you won’t be surprised by the fact that he was interested in selecting not only the person who would follow him as President of the Forum the next year but the person who would follow the year after that. [Laughter] He landed on me for some reason as the person who should be the head of the forum two years hence, so he included me in everything, in every aspect of it. I mean I would not only go to the lectures and help arrange them, but then I’d go out to his house afterwards to meet...
with the speakers. And we had an enormous range of speakers -- from Ralph Bunche, who became quite famous because he refused to speak to a segregated audience, to Joe McCarthy, to Bill Douglas, and all kinds of people like that. And I myself was responsible for bringing down Justice Jackson and Justice Frankfurter. It was quite interesting when Justice Jackson came down. He was exhausted, it was toward the end of the Term as I remember it, and he assumed he was going to have to go into a series of meetings before his talk. I said, “Now you’re not doing anything for about two hours, I’m putting you to bed,” and he was so grateful and he took like a two-hour nap and felt wonderful. Gave a very fine talk. Justice Frankfurter taught me something else very important. He came down on a very, very hot day. His wife was not bedridden at that time. We held a reception out on the lawn and I’ll never forget him walking up over the lawn, very short man with his tall wife well above his height, and he was proud as a peacock that he had her on his arm, it was really quite touching. And he came and enjoyed the reception, and then we went into an old hall that is no longer used, but it was a round room with murals on the wall and very little air, and it was crowded to the rafters with people. I’m sure it violated the fire marshall’s restrictions, there were so many people there, sitting, standing against the wall, everything. And Justice Frankfurter gave a talk entitled “Chief Justices I Have Known”. He had one little inch-by-inch clipping in his hand from a newspaper, and other than that he had no notes. And he began talking and he went all the way back to Melville Fuller and
talked about each Chief Justice he had known, except the current one, who I guess would have been Vinson (whom he hated, incidentally). He spoke without a note, he spoke for over an hour, and I heard people when they were leaving saying, "That is the worst single talk I have ever heard in my entire life." [Laughter] But what had happened was that it was so hot that people were uncomfortable from the very first word, they were not listening to him, they were not paying any attention to him. Fortunately, we recorded his talk and when we had it typed and read it, it was absolutely outstanding. It was subsequently published in the Virginia Law Review and then republished in a book, and it has since been republished all over the place. Most people assume he must have read it, because every sentence was correct, it came in paragraphs. He just talked, talked about how he'd remembered these various people. It's a wonderful, wonderful speech. But what I learned from it was that the circumstances have to be right. You can have a wonderful speech in a terrible atmosphere, and people won't listen or won't like it. And you can have a fairly bad speech in a wonderful atmosphere, and people might well like it. Anyway, the experiences with Bobby, as I say, came to mean a lot to me.

Mr. Kapp: Can I just step back here? I'm interested in how it is that at that stage in your life that you had access to Justices Frankfurter and Jackson.

Mr. Prettyman: Well I never knew but I assumed that it was because of my Father. I mean, he didn’t ask them, I asked them. But they knew the name,
and they had known and I think had respected my Father, and I think they did it probably as a courtesy.

Mr. Kapp: You just wrote them?

Mr. Prettyman: Yes.

Mr. Kapp: That's very interesting.

Mr. Prettyman: Because I don't think either one wanted to come down but, no, I've always assumed that many of the things that have happened to me have not necessarily been because of my Father but certainly have had something to do with him. When we had Bill Douglas down, it was pretty much as you would expect. I mean, Justice Douglas gave the talk that was typically him and included everything from the environment to the Court and everything else. It was not too unusual.

As for Joe McCarthy, we were right in the middle of the McCarthy period, and that was extremely well attended. Everybody was curious and he held up a paper, I forgot how many Communists were allegedly on it at the time, but you know it was kind of his rabble-rousing speech. And then we went back to Bobby's house and I have never experienced anything like this before. In effect, I saw the upcoming destruction of a man before it ever occurred. What happened was that he sat on a three-person couch, and there was a woman sitting right next to him, probably the wife of a student, and then I think a man at the other end of the couch. He was drinking and all of us from the Forum were around the floor in a crowded
room, a small room. And he started off, he was just full of himself and was kind of witty, and he began drinking and as he began drinking, the students very diffidently at first began asking him questions, and some of these began to get pretty pointed and they would not let him get away with his standard answers. They probed more and more, and he drank more and more, and then he began patting the knee of the young lady sitting beside him and she was getting very uncomfortable. I’m not sure he even knew he was doing it, and then he began to drink more heavily and then he sort of started to go to pieces, and the questions got more pointed and he couldn’t answer them. And it then began to get so embarrassing that people would drift out, and at the end he was sitting there with just a few people, almost in tears, drunk, out of control. Within the course of an hour and a half I had seen this man who had started totally on top of everything and full of himself destroyed. It was kind of a composite of what would happen to the rest of his life. Very, very unusual.

Mr. Kapp: Can you expand any further on your law school experience?

Mr. Prettyman: Well, I don’t know that I can except to say that I really had my heart in it then. I worked very hard on my own Law Review Note, which was a labor relations Note. It won the prize that year as the best Note. It’s funny: I did it in labor relations because I thought I might want to be a labor lawyer, and I have practiced now for over forty years and to my recollection have never had a labor case. [Laughter] But I enjoyed that at the time, worked very,
very hard on it. I worked very hard on the Law Review, I worked on moot court, I worked hard on my classes, although my grades again were kind of all over the place. I did a lot better in certain courses, like Constitutional Law, than in others. I was married now -- I had married Evelyn Savage in 1950, while still at the Journal -- and we were living in Charlottesville in a second floor set of rooms in a lady’s house. Evelyn had gotten hepatitis almost immediately after we were married. In fact, she may have had it when we got married. And she would run out of energy almost immediately, early in the day. So I ended up getting virtually all of our meals. I became a cook early on. So there were a lot of things that we did together, but there were a lot of things that she would have done if she had had the strength, but couldn’t. I guess what I’m trying to say is that I didn’t lead a frivolous life back in law school; you know, I was doing everything all the time. It really was not easy, but it was alleviated to some extent by the fact that I liked almost everything I was doing. I am trying to think if there are any other things that I devoted myself to. I was a student representative to some national student organization (I can’t remember what it was), so I’d go off and give a speech occasionally. There were intermittent things like that. But mostly it was concentration on the sort of things I was trying to achieve.

Mr. Kapp: You were starting to talk about Bobby Kennedy and your relationship at law school and some of the influences that he’s had on you. Would you like to expand on that a bit?
My relation with Bobby, we got along fine. I didn’t pay that much
attention to him. He was obviously not as well known at that time. I liked him, but
it never occurred to me that we would be friends later. I think it was one of those
things where we respected each other more than being close, personal, sociable
friends. We were usually together in connection with the Legal Forum or
something else having to do with law school activities rather than just socializing.

Mr. Kapp: Were there any friends that you made at law school who,
in your mind, have had an influence on you or with whom you maintained a
relationship in your later years?

Mr. Prettyman: Yes. I don’t know that they had that much influence,
but I certainly admired them and have stayed friends. One I can think of is Bob
Doumar, who is now a Federal District Judge down in Virginia, and we were close
then and are close now, although we obviously don’t get to see each other that
much. Another is George Blow, a name partner in a local firm here. Another was
George Revercomb, who became a judge here in DC and whom I did see socially
until he died a few years ago. Then there were the rest of the people from my law
school class, almost all of whom I really knew, whom I’ve seen either at reunions
or they’re occasionally through town or I’m occasionally through their towns. I
find that in my high school class and my law school class, we were all quite close,
in varying degrees, of course, but I knew them, whereas I knew very few people at
Yale. My roommates, of course, I knew well and stay in touch with them today.
And some of my friends from the fraternity. But really I was not a joiner in
college, and I did not know that many people. If I went back to a reunion today at
Yale, which I have not done for many years, I would not know more than 15-20
people. Entirely different from high school and law school.

Mr. Kapp: Was Judge Stanley Harris at the law school when you
were there?

Mr. Prettyman: Yes, yes, of course, of course. I feel very badly that I
left him out because he turned out to be the most important of the bunch.
[Laughter] Yes, Stan was there and we were friends and when we graduated he
came directly to Hogan & Hartson, while I was clerking, and he was ultimately
responsible for me coming to this firm. So he turned out to be very important in my
life.

Mr. Kapp: When you were in law school, did you have aspirations to
a career in appellate advocacy or had that not been formulated yet?

Mr. Prettyman: No, that didn’t come until much later. I had
aspirations to go with a good firm, not necessarily a large firm, but a good firm, to
be the best lawyer in the firm, to rise to the top, and one day to leave the firm.
That’s essentially what I wanted to do. I never gave 20 minutes worth of thought to
going directly into business or going into business at any time. I never gave serious
thought to teaching. I did back in the early days give thought to judging, but I
knew from my Father and from Justice Frankfurter and others that you don’t set
your heart on being a judge; it will tear you up. That just might come if you did the work well.

Mr. Kapp: Did you in those years, in your law school years, have any sense of particular public responsibility as a lawyer?

Mr. Prettyman: Yes, among the many, many, many things my Father taught me was just that. That is, you gave back. I was almost like a member of the Kennedy family in that respect, and I was taught that you have many responsibilities. You have to give back, whether it is doing what we now think of as pro bono work, community services work, or whether it is being in the government or whatever, you definitely cannot just go off and make money. It’s interesting that my Father even when he had his own law firm had never had an interest in money. It just never meant anything to him one way or the other. He thought that he had enough to be able to go to the beach, and he’d have an occasional trip, and he really did not aspire to very much more. And unfortunately I got that from him.

[Laughter] I’ve never thought much about it either. Very easily satisfied may be the way to put it. But no, I was not thinking about public advocacy, and when I first came to the firm I was into antitrust, so I mean I had no particular area that I was fascinated by. But I was quite malleable about the law in those days, in the sense that I think if I’d gotten that union case I thought I was going to get, I’d have been happy there. Or doing like Stan Harris did and get into communications law. I thought I could be happy in most everything, except, with all due respect, tax law
and a few others [*Laughter*]. Or strictly corporate work. It wasn’t so much that I didn’t like it; I just was not sure I was good at it.

Mr. Kapp: A generous sentiment.

Mr. Prettyman: I like to think that if I’d really put my head to it and found that that was what I was going to do, I could have done it. But I was never forced to do that.

Mr. Kapp: If you could put your head back to where it was during your law school years, would you say that by that time you had developed any particular kind of political or social philosophy or point of view?

Mr. Prettyman: My family was Democratic, they were Democrats going all the way back, at least to the Wilson Administration. As I mentioned, my Grandfather was Chaplain of the Senate. And I grew up being taught that Franklin Roosevelt was a great man, although not without his faults. That Harry Truman was a great President. He did appoint my Father to the bench, after all. And I think I was more liberal than my Father. My Father in today’s terms would probably be an O’Connor or a Kennedy -- moderate but perhaps slightly to the right. He was thought of as at the middle of his court and in today’s terms perhaps a bit more conservative than I was then and am now. I have tended to be, while not in any sense extreme left wing, I always think of myself as a liberal on most social issues and I was that way even during college, because one of my roommates was Sewell Avery’s grandson, and just about the most conservative person you have ever
seen in your life. And I can remember after the Truman election of 1948, having to wake him and tell him that Truman had won, and I thought I had a heart attack on my hands. So I mean even then I was rooting for Truman, and it came to me very naturally. I’ve had some of my conservative friends tell me it all happened to them in a flash, that they were affected by a parade here or a sentence there, or whatever, but it was never that way with me. I just over time felt that some people were more fortunate than others and that the fortunate ones owed something in varying degrees to the unfortunate ones. And further, that there are explanations for a lot of really terrible conduct, which does not mean that I forgive everything, it doesn’t mean that there aren’t bad people. It doesn’t mean that there aren’t people who should be locked away for the sake of themselves and others. But in representing criminal defendants over the years, I have found that when you first meet them you are horrified at the alleged crimes, and part of you immediately wants to leap to judgment. But that when you get to know them, you are not surprised that they committed crimes; you’re surprised they didn’t commit them sooner than they did and more crimes than they did. Because you look at their circumstances and how they grew up, and I put myself in those circumstances, and if someone wanted to prove to me that I could grow up like some of these people and not turn out to be a criminal, I’d never believe it. So that’s sort of the way I’ve looked at things for an awfully long time. Of course, I don’t know quite where I got the original idea but it came to me very naturally and over time.

-55-
Mr. Kapp: Well, you said that if your Father had been sitting on today’s Supreme Court that you would have expected to him to have a judicial philosophy that was similar to that of Justice O’Connor’s and Justice Kennedy’s. If you yourself were sitting on the Court today, where do you think you would find yourself standing?

Mr. Prettyman: Well, he’s not on the Court today, but the one who would come closest would be Bill Brennan, without question. There are very few cases where I would not have voted the same way as Brennan did. I can’t tell you on today’s Court, it’s a little bit more difficult. I don’t know enough yet about Ginsburg and Breyer. Stephens usually votes the way I would, but he doesn’t exactly think the way I do. And he certainly dissents in a lot of cases that I would not bother dissenting in. It also depends on the issue. If it’s First Amendment, I might be a Kennedy, who is very strong in that regard. But if it’s a criminal case, I would not be a Kennedy or an O’Connor. I would have been a Brennan, and on today’s Court I might vote more closely with Souter. It just depends on the nature of the case. I don’t say this about Brennan because he happened to vote for my side in 13 out of the 18 times I argued before him. I simply tend to see things the same way he did, including in regard to the death penalty.

Mr. Kapp: I think it might be a good time to talk about your Father here if we can. Could you describe what you view to be the high points of his career?
Mr. Prettyman: Yes. One would be the day in 1945 when he was appointed to the Court of Appeals, no question about it. He had been working himself to death with his own law firm, Hewes, Prettyman and Awalt, keeping terrible hours, worrying about absolutely everything -- are we spending too much on coffee? -- the whole business that comes with a small firm. He was aging in front of our eyes, and all of a sudden “Tommy the Cork” Corcoran convinced Truman, who was new in office, that he had to appoint someone to the D.C. Circuit who would be well respected and admired, and so one of Truman’s first federal appointments -- if not his first -- was my Father. He did not know Truman, but Truman followed Corcoran’s advice and appointed him. And it was so funny because my Father came home, and we were going to have a family consultation -- my sister and myself and my Mother. And he seriously put it to us as to whether he should accept because of that big cut in salary. And we just all laughed [Laughter] because, first of all, our advice was going to mean absolutely nothing. We knew that he wanted this. And secondly, we thought and it turned out to be true that it would save his life. That even though he worked hard, he would get up at the same time every day, he would go in at the same time every morning. He would have a controlled life where the messenger would take care of certain things, the secretary would take care of certain things, the law clerks would too, and he would come home at about the same time each night. And, indeed, he suddenly became a younger man. Moreover, it was what he was born to do. I mean, if ever a job was made for a person, that one
was made for my Father. It’s so interesting that Judge Tamm who was a District 
Court judge here for many years and perhaps the best we’ve ever had -- he was a 

wonderful District Court judge -- was finally persuaded to join the Court of Appeals. 

And after he’d been on there about a year he came to my Father and said, “This is 
the most damn fool thing I ever did in my life,” [Laughter] because he was born to 
be a District Court judge. My Father, on the other hand, had no interest in that, and 
he told me he would be terrible at it. But he loved the Court of Appeals, he loved 
the arguments, he loved the writing, he loved the administrative side of it. When he 
became Chief Judge, he did all kinds of innovative things down at the court. And so 
he was a very, very happy man and perhaps I should tell you here –

Mr. Kapp: Go ahead --

Mr. Prettyman: Towards the end of his career, the very end, while he 
was still on the bench, he became concerned that he would be incapacitated without 
knowing it, that he would go over the edge toward confusion or whatever, and that 
would ruin his career, which he was very proud of. And so he came to me and said, 
“You’ve got to do me a favor, and I don’t want to know how you do it. I want you 
to assure me that you will find out at that point in time when I should no longer be 
on this bench, and when you tell me that it’s time for me to leave, I will leave.” So 
I went to two members of his court, unbeknownst to him, and I told them what he 
had told me, and I told them I was going to count on them to let me know. And one 
day I got a call from one of those judges, and he said, “I was sitting with your
Father on a case today, and while nobody else noticed this, for a moment I thought he became confused between two of the cases that we were hearing.” I went to my Father that night and said, “It’s time to leave.” He resigned the next day. Never asked me a question about it.

Mr. Kapp: He was what age at that point?

Mr. Prettyman: Late 70’s.

Mr. Kapp: You feel comfortable about telling us who the two judges were that you reposed confidence in?

Mr. Prettyman: I think not, because they told me in confidence, and I told them I would keep the confidence, so I see no reason why I should break that today, even though both are gone.

Mr. Kapp: I wonder if maybe we could go backward here for a moment and see what you remember about your Father’s career. He had a period of time in private practice. Do you have memories of that?

Mr. Prettyman: Well, he started out in a little town in Virginia, Hopewell, and as I have mentioned, he was a newspaper reporter. He went to Georgetown Law, and then he went back to Hopewell and I think continued to do some newspaper work along with his so-called law practice in order to be able to eat, because his law practice was over a store and he had one other guy with him, and they had virtually no clients except people who wandered in off the street. So it was pretty slim pickings. Then he knew Franklin Roosevelt, I guess just through
party activities. And he became eventually, I guess you’d call him the head of the Law Section of the Internal Revenue Service?

Mr. Kapp: The General Counsel of the Bureau of Internal Revenue I think.

Mr. Prettyman: I’m not exactly sure that was it. But in any event. Then he got fired from that job in a big dispute over the gold standard with then-Secretary of the Treasury Morgenthau, and Morgenthau won that battle, my Father got fired, and as a kind of palliative, Roosevelt made him Corporation Counsel of the District. And when he was through with that, he started his own firm, Hewes, Prettyman & Awalt, with Tommy Hewes, who was actually a Connecticut lawyer who sort of commuted, and Floyd Awalt, who I think had been with my Father at the Internal Revenue Service. It was largely a tax practice, not entirely a tax practice, but largely a tax practice, and that’s what he was doing, plus teaching tax law at Georgetown, when he was appointed to the court in 1945.

Mr. Kapp: Was the position at the old Bureau of Internal Revenue a political appointment?

Mr. Prettyman: It was by those standards.

Mr. Kapp: And who appointed him to that?

Mr. Prettyman: I think it was Roosevelt.

Mr. Kapp: Yeah. And when he finished up as Corporation Counsel, he returned to private practice again did he?
Mr. Prettyman: No, he started that firm. He had not been at that firm before. He'd been practicing down in Virginia before, and then they started Hewes, Prettyman & Awalt, which was on Connecticut Avenue right across the street from where Hogan & Hartson was located before we came to this address. He used to have this very funny firm, I mean it was very informal and almost English in style. It was three stories of a very thin, small building, and every afternoon at 3 o’clock they would stop for tea, and it didn’t make any difference what you were doing, whether you were in conference with a client or anything else, everything came to a halt. Everybody came to one floor, and they had tea and then they’d go back to their client meetings again. [Laughter]

Mr. Kapp: Your Father also served, did he not, as President of the Bar here in the District?

Mr. Prettyman: Yes, the voluntary Bar Association. He was also President of the Washington Board of Trade, President of the Georgetown University Law Alumni Club of Washington, and President of the Civitan Club. One thing that I forgot to mention that he did because it came before his appointment and during his stint with his law firm, he was the hearing officer for conscientious objectors for D.C. He worked out of the Office of the Attorney General and was a kind of judge for those who were claiming conscientious objector status, and he would rule on whether they had to serve or not. Later, during his judgeship, he established the Administrative Conference, which has only recently come to an
end. He’s thought of as the father of that, and he also had special assignments from at least three Presidents. He was the Chairman of the President’s Conference on Administrative Procedure, Chairman of the Board of Inquiry into the Francis Gary Powers’ U-2 case, Chairman of a Committee on Veterans’ Hospitals, and also Chairman of the President’s Commission on Narcotics and Drug Abuse, so he was engaged in a number of special assignments for various Presidents.

Mr. Kapp: Not bad for a tax lawyer I would think. [Laughter]

Mr. Prettyman: Amazing. [Laughter]

Mr. Kapp: Can you tell me what you remember about his interests, his friends, things of that sort?

Mr. Prettyman: He loved involvement in neighborhood plays, and he became the director of a group out in Montgomery County that put on plays. And I understand he was very strict, while at the same time being very funny. I saw a few of those plays but I never saw him doing the directing beforehand. A tough taskmaster. He loved that. He had a lot of friends, and many of them were not lawyers. He liked singing groups, what do you call them --

Mr. Kapp: Barber shops?

Mr. Prettyman: That’s the group. He also loved to work with his hands. He had a lot of tools, and he made things. One of the great memories of my childhood was Christmas. He would close off the basement for at least a week ahead of Christmas, and he’d be down there in secret, and we’d have no idea what
he was doing. And Christmas morning the first one awake woke the rest of us, it could be 5 o’clock. We went downstairs by height, the smallest person first, working up to the tallest, and of course that could change over the years. We then had one look at the basement, which I can’t even describe. Every year it was different, but it was emblazoned in all kinds of crazy things. One year we had everything upside down, including the Christmas tree, and it would just be startling and so exciting you could hardly stand it. You were allowed to open one present, and then we’d go upstairs for a very brief breakfast. Then we’d go to church and come back and have a full breakfast, and finally [Laughter] we could go down and attack everything in the basement. But I can’t tell you how exciting it was, and I carried this on with my own children later. Precisely the same thing. Because it was the most exciting thing in my youth to build up to Christmas over 7 to 10 days and then to know it was going to be so impressive, it was just going to hit you right in the head with that first glance. That’s the kind of thing he did.

He loved to fish, and he once took me on a trip to Canada, where we had Indian guides and went all around trout and salmon fishing. We would also fish from the surf in Ocean City. My family went every summer to Ocean City. They would go and stay at different places. One time they’d be at a hotel, another time they’d rent a house, another time they’d rent a small apartment. They finally ended up at a motel staying in the same room every summer. And to show you some of the things he did when he worked with his hands -- I’ve seen this since but I
had never seen it before -- he built a huge chess table that was almost as big as this table we’re sitting at. Huge. And then the pieces would be several feet high, and you would move them with a long stick with a curve at the end of it, so that everybody could see, and you’d move these pieces back and forth. It was very impressive. He just thought that up. But as you can see, I was then and am still a great admirer of my Father, thought he was an extraordinary man. And my Mother too, who was this wonderful, loving, funny, funny woman. I never had a bad feeling about my family.

Mr. Kapp: Were there particular areas of conversation that you tended to have with your Father as you were growing up and then as you became an adult? Can you describe those?

Mr. Prettyman: Yes, a lot of politics. Dinners would be almost entirely politics. Not participatory. He wouldn’t be involved directly, but from the edge. Or cases, not that he was presently working on but after they’d come down, he’d love to talk about cases that he had either worked on as a lawyer or decided as a judge. He once swore me in as his special clerk. I’m sure it was probably illegal, [Laughter] but he swore me in as his special clerk on one case. And I think it was a communist case, I’m not sure. But I worked with him like a law clerk on that one case. Otherwise, we never discussed pending matters at all. I may have mentioned to you but at one point when I was clerking on the Supreme Court, my sister was working for the CIA, and my father was on the Court of Appeals. There’d be these
long silences at the table, [Laughter] and my mother would say, "Well, if you can't talk of anything else, pass me the salt". [Laughter] But, he was very conscientious in that respect, and he had such a sense of responsibility that I think I learned that too, that your personal integrity, your sense of responsibility are all important, and if you made an ethical mistake or misjudgment, even if only you knew it, that was very bad, because your integrity, inwardly and outwardly, was extremely important.

Mr. Kapp: If you had to describe his contributions to the Circuit, both as an associate judge and as the chief judge, what would you say about that?

Mr. Prettyman: First of all, I think the kind of judge he was and the way his brethren respected him were important. That is, they knew he did not come to cases with an agenda. The case would come in, and he'd look at it, and he'd judge it fairly, depending on how he saw it. Whether he was right or wrong, it did not come out one way because the union name was on the outside cover, or General Motors was on the cover -- all that had absolutely no impact on him whatever. Justice Burton used to be like that, Harold Burton, on the Supreme Court. We once had a vote among the law clerks, and the hypothetical was this: only one Justice on the Court makes up all nine. Which Justice would you choose if your life was at stake? You can assume you were guilty or not guilty; you can assume anything you want. Which Justice would you choose? And the vast majority of us chose Burton, because we thought he would be the fairest, regardless of any biases; he would look
at it evenhandedly, wanting to do justice and be fair. I think of my Father pretty much the same way. So I think that accounted for a lot, and he wrote well. As Chief Judge, he immersed himself in everything. He had diagrams and statistics, and he'd go before Congress and argue for the court. I think he was the one who was responsible for getting a juvenile court started, even though it wasn't under his direct aegis, because he believed they needed it, and he engaged in other things outside his immediate domain because he believed they needed doing. I think he really began the theory that a chief judge should not just be another judge but someone worrying about the court and its personnel and its finances and where it was going -- does it need facilities and all the rest of it? He took great interest, for example, in what was going to go in front of the courthouse, you know, the obelisks, for example. He worried about all of that.

Mr. Kapp: Are there any particular cases that come to mind on which he sat that made a particular impression?

Mr. Prettyman: Well I honestly would have to go back and look, because there were so many of them. I'm terrible at remembering case names. There were any number that I thought were interesting and impressive, but it's not as if any one case stands out. Except perhaps for one, and that was because he was so disappointed when the Supreme Court reversed it. A health official came to somebody's house and intruded into it, almost forced himself in, and my father wrote a very, very strong opinion, claiming that no health official had a right to
enter someone’s home without permission, no matter what business he was on. And that was reversed, I think in an opinion written by Douglas in the Supreme Court. And at one point I came to my Father and I said, “I don’t know whether you realize this or not, but in many of your opinions your-home-is-your-castle is a thesis that shines through. I mean, you’ve done this time and again.” And he was taken aback; he just hadn’t realized it. Then he thought about it and he said, "Well, now that I think about it, I see clearly that when we grew up we never owned a home. My Father was a Methodist minister, and we were always in somebody else’s home, or in a parsonage.” He said, “I remember one summer we went away for a week or two and came back and the parishioners had come in and changed the furniture all around, put things upstairs that were downstairs. We had no say about it.” He said, “When I got our first home, it wasn’t much but it was the greatest thing I had ever owned and nobody was going to come in there.” [Laughter]

Mr. Kapp: How did he react to reversals generally?

Mr. Prettyman: I never heard him raise much of a fuss about it except in that one case, which I remember very well. He thought Douglas and the whole Court was absolutely dead wrong, and he was very concerned about what it meant for the Constitution. But usually he would just not pay much attention -- I mean, he knew that honest men can look at the same thing and come out differently, and he knew that under our system the Supreme Court has the last say. In fact, he banked on that. I remember his first death penalty case. He was up late at night,
worrying about it, but then he finally said, “Thank God there’s a Supreme Court.”

But no, I think he thought that it was just one of those differences of opinion. Sometimes he clearly thought they were wrong, but you know, that was their job. I don’t remember him railing against them as if they were engaged in one set of duties, and he in another. He looked at it much more as if honest people just disagreed.

Mr. Kapp: Were there any colleagues on the D.C. Circuit bench with whom he was particularly close?

Mr. Prettyman: Well, it’s interesting. His brethren on that court ranged from Bazelon to Burger. But there didn’t seem to be any particular buddy. He, for example, joined Bazelon very wholeheartedly in the Durham insanity cases changing the standard that would have to be applied in criminal cases.

Mr. Kapp: Yeah --

Mr. Prettyman: That was Bazelon’s baby, but my Father was one of the first to join him, and join him wholeheartedly. On the other hand, he often voted with Miller, who was extremely conservative, and Burger, who was a little less so but still conservative. He enjoyed Danaher, he liked Washington. He admired Fahy, Leventhal and McGowan. I don’t know of anybody on there whom he really disliked. He certainly disagreed often with Bazelon because he thought that in some cases he just went too far. But I think he really got along with most of them. I don’t remember anybody who was his enemy, or for whom he really had no respect.
He perhaps thought that someone like Miller was, how shall I say it? You could tell so easily which way he was going to go on a case once you knew what the case was about [Laughter] or even who the parties were [Laughter], and he would be critical of that. But that certainly didn’t affect him personally.

Mr. Kapp: Do you have any understanding of who the outstanding judicial figures were in his mind?

Mr. Prettyman: Well, I know he deeply admired Charles Evans Hughes. I think that he also admired Brandeis. In more modern times, he thought Jackson was wonderful. On the so-called Roosevelt Court, although he knew and liked Douglas, he didn’t think like Douglas did -- and actually I think the same can be said of Black. I’m really trying to think of anybody on that court whom he would have felt particularly close to except Jackson. Maybe Frankfurter to some extent. I’d have to think about that.

Mr. Kapp: Were there judges on the D.C. Circuit with whom he more frequently than not tended to ally himself?

Mr. Prettyman: No, it wasn’t a matter of alliance so much as it was subject matter. If it was a criminal case, he might be in Burger’s camp more often than Bazelon’s. If it was a First Amendment case, he might be in Bazelon’s corner. It just really depended upon the subject matter.

Mr. Kapp: What about lawyers? Were there any that in his mind he viewed as outstanding lawyers, outstanding appellate advocates?
Mr. Prettyman: I know he greatly admired Ed Williams, even in those early days. But to be honest, I can't remember his coming home and saying ah, we've just had this wonderful argument today and this particular person's always good. I'm sure he did, but I just don't remember it. He had so many friends across the legal community, and some of them -- I can think of a couple of names but I won't mention them -- may not have really been top notch lawyers, but he nevertheless really liked them and enjoyed them. Now you have to remember that he chose his law clerks, not because of their great intellect -- and I certainly don't mean to imply that they were in any way deficient -- but because of their judgment, their common sense, and their ability to understand and get along with him. So the fact that some lawyer, judge or clerk was brilliant was not for him the determining factor in whether they deserved his admiration or whether they would be friends.
Mr. Prettyman: I was just talking about my Father’s law clerks, and I was saying that they obviously had to be smart but he was much more interested in kids whom he could get along with, who could talk his language, whom he wouldn’t have to fight with every day about everything -- not necessarily who believed exactly as he did, but who would not be engaged in an ongoing feud of some kind. He wanted people with whom he was amenable and could be on very friendly terms with. One of his law clerks, for example, was Dick Loos, and his father Carl Loos had been my Father’s friend for probably 20-30 years. So he knew Dick Loos, he knew where he came from, he knew the kind of thinking he did, he knew he could get along with him, and that was his choice. There was one funny interview I have heard told in various ways, but the reason I know that the way I am about to describe it is accurate is because my Father himself told it to me. He had an applicant from Virginia named John Warner. And the interview had been going on for about 15 minutes when my Father said, “You know, I have to tell you, Mr. Warner, that you have a good record, but it’s certainly no better than those of easily a dozen other people I’ve interviewed. Why should you have this job?” And John
apparently leaned over the table and pointed his finger at my Father and said, "I'll tell you why. Because I have read every opinion you've ever written, I've read every article you've ever written, I've read every speech you've ever given. I know you better than anybody but Mrs. Prettyman." [Laughter] And he got the job. John, of course, is Senator Warner now, and he's always felt that my Father was responsible for his whole career, because without that jump-start at that particular stage as a law clerk, he might not have achieved anything else that he has done. So I know he has been particularly appreciative of his getting that job.

Mr. Kapp: If you had to describe your Father's approach to the judicial function, what would you say?

Mr. Prettyman: Very, very professional. Tough job that you have a duty to give everything to. You just give it your very best. You decide as best you can with what brains God gave you, and you write so that everybody including the layman will understand what you say, why you did it, even if they don't agree with you. It's your duty to bring justice to as many situations as you can, while recognizing that in certain areas Congress has control and Congress may not have done the just thing. To play the law as you see it and as you find it, rather than as you'd like to make it. Not to let go of, or let slip by, a situation that is obviously and totally unfair, but to play it even-handedly and straight down the middle. I mean, I don't know any other way to describe it. He was very professional about his outlook and about his work, I thought.
Mr. Kapp: Would you say that he was non-ideological?

Mr. Prettyman: Largely so. There were some things that really got under his skin. Unpreparedness was one of them [Laughter] But where government was obtuse sometimes, or unforgiving, where it should have used common sense, he was very much of a pragmatic, practical, common-sense kind of a person. He knew that there were rules that sometimes had to be broken. It infuriated him when somebody went straight ahead in the face of all common sense and did something really stupid, mean, unkind. He was not ideological as a judge. I think he was ideological as a person. But as I've said before, I don't really think that he came to the table with an agenda of things that had to be accomplished. That's not how he thought of the job.

Mr. Kapp: In today's terms, would you think of him as a centrist?

Mr. Prettyman: Yes.

Mr. Kapp: You would?

Mr. Prettyman: Yes, that's why I said he was probably closer to an O'Connor or a Kennedy on most issues, because they are the center of that Court now and that's probably about where he'd be.

Mr. Kapp: Anything else on the subject of your Father that you'd like to say?

Mr. Prettyman: Well, I took pride in the fact that he took so much pride in me. He would not gush over things, but he made it very clear that
whenever something nice happened to me, it pleased him too. He followed my
career until his death very, very closely, and I would not hear it from him but I would
hear from others that he had commented on how well a job I had done here or there
or the fact that he was so proud that I had accomplished something. And I like that. I
felt the same toward him whenever he did something special -- I was always very
proud. Somebody asked me once wasn’t it a burden to have had a father who was
like that? And I just laughed. I mean it never occurred to me to think of it that way.
Not only was he no burden, but he helped me tremendously in ways that I’m sure I
don’t even know about in every respect. I’m proud of the fact that sometimes when
good things happened to me, at least in part it was because of him, even when I
didn’t know about it, although of course I had to take it from there and make of it
what I could. He could not clerk for me, even if he was instrumental (and I don’t
know that he was) in getting me that first clerkship. After getting the job, I certainly
had to perform. But I never thought of that as a burden. I just thought that that was a
marvelous dividend I got that I’m very proud of.

Mr. Kapp: What about the business of having to live up to the
reputation of such a distinguished father?

Mr. Prettyman: Well again, I think that is true. I’m sure that that is in
the back of my mind all the time. But I haven’t thought of that as a burden. I
thought of that as something to aspire to, and I don’t for a moment think that I have
in any way come anywhere close to being my Father’s equal. But I am proud
of the fact that I haven't totally screwed up, either. I've done some things on my own that I'm proud of, and his record has always been something to aspire to, so that you want to be better, to be like your Dad. I think a lot of people feel like that. If I had wholly crashed, like the son of another judge I know, I think that could become a terrible burden. Aspiring to something and then failing miserably. So even if you don't come anywhere near equaling your Father, the fact that you've still got that model out there so that you can constantly work till the very end to come close to that goal, gosh I think that's a great way to live.

This concludes the interview held on June 6, 1996.
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson L.L.P. on the 15th day of July, 1996, shortly after noon.

Mr. Kapp: Barrett, the United States Courthouse for the District of Columbia was recently named for your Father. I wonder if you would like to comment on those points in his career which you believe may have influenced that decision.

Mr. Prettyman: Well, of course I don’t know for sure, but I think that there are three aspects of his career that led to this. The first is because of things that he did locally. The second was because of things he did nationally. And the third reason relates to the sponsor of the Bill in Congress. Locally, although my Father lived much of his life in Virginia and nearby Maryland, he also lived for a time in D.C. He attended a D.C. public school. He attended Georgetown Law School. He was a member of three D.C. churches. And he was Corporation Counsel for the District, a name partner in a District law firm. He was President of the D.C. Bar Association, President of the Washington Board of Trade, President of the Georgetown University Law Alumni Club of Washington. He was a hearing officer for conscientious objectors for D.C. in the Office of the Attorney General during the Second World War. He was President of the Civitan Club, and then he engaged in a
great variety of activities, such as the D.C. Area Council on Alcoholism, Goodwill Industries Group, the Red Cross Roll Call, and a wide variety of other activities for the general good, all of them here in D.C. On a national level, in addition to being on the D.C. Circuit, he was appointed by four Presidents to special assignments. One of them was as Chairman of the President's Conference on Administrative Procedure, and in fact he has been generally recognized as the creator of the Administrative Conference. He was also Chairman of the Judicial Conference Committee to study procedures in antitrust and other protracted cases. He was appointed by the President as Chairman of the Board of Inquiry in the Francis Gary Powers U-2 case. In that case, he was the one judge who was acceptable both to Powers and to the CIA to determine whether Gary Powers had performed his duties adequately after he was shot down over Russia. That was, of course, a very sensitive assignment. He was also Chairman of a Committee on Veterans' Hospitals, and he was appointed by the President as Chairman of the President's Commission on Narcotic and Drug Abuse. So each of these was somewhat related to, but in many ways outside the ken of, his normal judicial assignment, and each of these jobs involved national policies and priorities. So I think that in that sense he was more, if you will, than just another judge. And the third reason for the Bill is because of one of his law clerks. John Warner became my Father's law clerk against all odds, if you will. [Laughter] He went from there to work with the U.S. Attorney's Office. He worked with a fine law firm, namely ours, and went forward
from there, and I think he always felt that being my Father's law clerk was what got him started. He was very appreciative, and he was the one who introduced the Bill in the Senate and guided it through Congress and of course President Clinton signed it recently.

Mr. Kapp: I wonder whether you have any recollection at all with regard to your Father's handling or findings in the Francis Gary Powers case.

Mr. Prettyman: The answer is no, because it was very secretive, and so far as I know the hearings themselves have never been released. And he did not talk about it. The only public part was when the decision came out that Gary Powers had in fact conducted himself within the confines of the rules. Interestingly, Gary Powers wrote a book about this whole thing and said that he did not like my Father. And I was stunned by that [Laughter] because frankly so many people have come up to me to tell me how much they cared for my Father that this is virtually the only memory I have of anybody who disliked him. I would guess that Gary Powers was affronted by the difficult questions that had to be asked of him, questions that even implidely suggested that he might have done anything wrong. And therefore he took offense at the person who was questioning him. But just as my sister when she worked for the CIA never revealed any aspect of her work and to this day I don't know what she did, so too my Father never revealed to any of us the details of that investigation.
Mr. Kapp: As we move on here I’d like to talk a bit about your marital life and your family. I wonder if you could tell me about that.

Mr. Prettyman: I met Evelyn Savage who lived in Baltimore on the beach in Ocean City, Maryland. Probably about 1946, right after the war. We dated for quite a period and were finally married in June of 1950 in Baltimore on one of the hottest days in history. My parents rented a bus to take friends of theirs and mine over to Baltimore, and it was pretty uncomfortable apparently with the heat. But anyway it was a beautiful wedding. I’d already gotten to know Evelyn’s parents. Her father was in the insurance business, and I had dated Evelyn during her Wellesley years at the time I was at Yale. So in any event we were married in 1950. We were fortunate enough to be able to adopt two children, a boy -- E. Barrett Prettyman, III -- who goes by the name of Ty, and a girl -- Jill Savage Prettyman -- both of whom ultimately became engineers and married engineers, and each of whom has a son. So I have two grandchildren. We were ultimately divorced after many years of marriage, primarily because we just grew apart. She had different interests than I did.

And sometime later, just before I left on my Sabbatical, I met Victoria Keesecker from Hedgesville, West Virginia. Met her in Washington at a function. We wrote to each other during my Sabbatical, and after going with each other for a number of years we married and remained married for some six years. She had a great desire to be an actress, and she appeared in plays out here in Columbia,
Maryland, which I went to see. She then felt, however, that she needed the contacts and training that New York would offer her, so we got an apartment in New York and traveled back and forth on the weekends. And ultimately she decided that she needed to be in Hollywood, so she went to California and the marriage could not sustain that for too long and so we were ultimately divorced.

I have not married again but for the last 10 years have gone with the same lady, Dr. Noreen McGuire, a psychologist from New Jersey who has been working in Washington at American University and George Mason University during that period of time. We are still together. We are very well suited, and we have traveled a lot -- to Ireland, Britain, France, Italy, Greece, Japan, Switzerland and to most States. She is a lot of fun.

Mr. Kapp: And your children -- are they here in Washington or are they elsewhere?

Mr. Prettyman: It’s interesting. My daughter lived in nearby Virginia until recently and then moved to Texas. Whereas my son lived in California until recently and then moved to nearby Virginia. So I had a period when I could see one grandson regularly, and now I have a period when I see the other one regularly. As I think I mentioned, both children are married to engineers, so there are no lawyers in the family -- at least until I can get hold of my grandchildren and point them in the right direction. [Laughter]
Mr. Kapp: I want to return here to your earliest legal experiences following graduation from law school. Can you tell me what you did immediately following your law school graduation?

Mr. Prettyman: Well I clerked immediately upon graduation. And then I came with Hogan & Hartson. I very much wanted to clerk at the Supreme Court, and in those days you did not have to clerk at a lower court before you went there. Virtually all of the clerks on today's Court have clerked for another judge, usually a Court of Appeals judge. It was less formal in those days, and I had had Justice Jackson down to Virginia Law School to speak, had gotten to know him that way, and so I applied to him and at the interview he let it be known that while my law school record was important -- and I had done well in law school -- the most important thing for him was a personal relationship. He had had two clerks the year before, one of whom was later to be Chief Justice -- namely, Bill Rehnquist -- and Jackson had decided that for whatever reason he did not want to have two law clerks any more. He said he would only have one, and if I were willing to do the entire job, I could have the position because we obviously got along very well. He had an interest in politics, as did I. We just talked the same language, and it was very quickly apparent that we enjoyed each other. So needless to say, it took me approximately four seconds to determine that I was prepared to do all the work, and this meant filing memos on some 5,000 cert petitions a year. It meant working on his opinions. He drafted almost everything the first time himself. It meant arguing
with him -- he loved to argue about everything so as to clear his mind, both before argument and after, during the writing of the opinion and after.

That was a thrilling experience, working at the Court. There were only 18 clerks in those days. We all knew each other well. We would have lunch together much of the time. Quite often, at least once a week, we could have a Justice in to talk to us. Also, most importantly, totally unlike today as I understand it, the Justices themselves would go from office to office quite a bit, and I had a lot of contact with the other Justices. Justice Douglas, who didn’t talk to many people, including his own law clerk very often, kind of took me under his wing, and we got along well. I also got along with Justice Black, who of course had had the run-in with my Justice, Justice Jackson, in prior years. And we got along extremely well, and I remember one day I went in and had a long talk with Chief Justice Vinson, when I was kind of wandering the halls. It was much chummier, if that’s the right word, in those days, more relaxed than I understand it is now. And that’s understandable because the load was not as great then, and they had fewer precedents to deal with. I don’t really know how to explain it except that the whole atmosphere seemed to be more relaxed than I understand it is today.

So that was a wonderful experience, and of course I came in in the middle of Brown v. Board of Education -- that is, it had been argued once before I got there, and I had not been there very long when Chief Justice Vinson died, quite suddenly. And the case was set for reargument. The Court really was split. It was
not clear how that case would be decided. Everyone guessed that a majority would indeed strike down discrimination in the schools, but it was also quite clear that at least some Justices would dissent. It was not clear how many would. Justice Jackson in the middle of all this wrote what he called a concurring opinion, and I remember it so vividly because I had not realized he was writing it. He did not discuss it with me ahead of time. And he gave it to me, and I studied it very carefully and I remember it just like it was yesterday: I sat in my office on a Saturday and typed my memo to him myself; I didn’t even want to give it to the secretary. And I told him very frankly what I thought of it, and I was terribly naive because it never, never occurred to me that anybody would ever see those sheets of paper except him and me. And in fact I gave it to him personally, handed it to him so there could be no lapse there. And I told him quite candidly that I didn’t think much of the opinion, that it sounded more like a dissent than a concurring opinion, and then I just went through it and pointed out different things that I thought didn’t hold up. Years later, when the author of Simple Justice, Richard Kluger, called me and asked to talk to me about that case, I said I was sorry but having been a law clerk I was bound by secrecy and could not say much, and he laughed and said, “Well, I don’t need to ask you much because I have Justice Jackson’s unpublished opinion, and I have your memo to him, and I only have a few questions.” [Laughter] So my memo was given to him not by me, of course, but by the Justice’s family, and he printed sections of Justice Jackson’s unpublished
opinion and my, until then, unpublished critique of it. But that memo if you ever see it will give you an idea of the relationship between the Justice and me, because I could say critical things like that to him that I might not be able to say to some other Justice. I didn’t have to smooth his feathers or stroke his ego or apologize for anything. We had a nice relationship, and in fact he asked me to stay on a second year as his clerk, which I said I would do. I heard the great argument in \textit{Brown v. Board of Education} when it was reargued. John W. Davis and Thurgood Marshall and others. It was still not clear how the case would come out until suddenly Justice Jackson had a heart attack, a rather serious one. Chief Justice Vinson having died, Earl Warren was appointed to succeed him, and I happened to be in the hospital visiting Justice Jackson the day that Chief Justice Warren brought the first draft of \textit{Brown v. Board of Education} by for Justice Jackson to see. I excused myself, and the two of them stayed in the room for a while, Warren left, Jackson called me in, and he told me to take the opinion and go down the hall and read it. I took the draft and went down the hall and came back. He asked me what I thought and I was quite thrilled. I said, “You know, it meets a lot of the problems that you had, as expressed in your unpublished opinion, and while it certainly doesn’t contain a lot of law, it makes sense, it hangs together, it doesn’t offend people, it reads well, anybody can understand it.” And he said, “Exactly.” He made a few suggested changes, which I took to the Chief Justice, and the Chief Justice rejected a couple of them for the very good reason that they implied -- they didn’t say, but
they implied -- that striking down discrimination in the public schools could apply in other areas. Jackson had not meant that, but the inherent nature of the suggestions was such that you could take them to be read as applying in other areas. And the Chief Justice very wisely felt that this opinion should be narrowly written to apply to public education only. The Court could deal with other matters later; there would be enough trouble with the opinion, even with its narrow focus, without inviting further trouble.

In any event, the votes were finally in, the last hold-out was Justice Reed of Kentucky, and finally there was a unanimous Court. And Justice Jackson, against the advice of his doctors, was determined to attend the Court session when that opinion came down to demonstrate the unanimity of the Court. And so, unbeknownst to reporters, he came in the garage and went up through the back elevators and appeared on the bench that day. He had been kind enough to alert me that the case was coming down, which some Justices did not do, and some clerks were not present. But I was there, and it was a very, very emotional setting.

Several routine cases came down before Brown, and then the Chief Justice said, “I have the opinion of the Court in number so and so, Brown v. Board of Education.” The courtroom was packed because it was right near the end of the Term, and he read the opinion, not every word. You couldn’t tell at first how it was coming out, and I understood later that the wire services began reporting that he’d started reading but the result couldn’t be determined. And when he reached the key line,
instead of saying “we hold,” he said “we unanimously hold,” and when he said that the packed courtroom went “ahhhh”, all in unison, everybody was so surprised. It was not too long after that that Justice Jackson suddenly died.

Mr. Kapp: Before you go on to that, I wonder if we can talk a little bit more about Justice Jackson’s draft concurring opinion and your memo which Richard Kluger in Simple Justice characterizes as courageous. Can you just tell us briefly about the thrust of Justice Jackson’s draft? I know it’s quoted in part in Simple Justice, but it would be helpful I think at this point to tell us a bit about that.

Mr. Prettyman: Well, I haven’t reread that in some years now, but what Justice Jackson essentially was concerned about was that the Court would castigate the South for segregation in the schools. And Jackson felt that if there was any blame to be placed, it should be placed entirely on the Supreme Court. The Supreme Court had set up Plessy, and had condoned for many years segregation in the South and elsewhere. The South had done what it had to do whenever the Court ordered it to do so, such as making law schools equal, and it was totally unfair to say anything that would indicate that the South was at fault. He also felt that the Fourteenth Amendment was totally ambiguous on this subject. That a decision based on the Fourteenth Amendment would have been wholly improper and unsupported, and that if the Court was going to overrule Plessy, it had to be forthright and frank in saying, times change; regardless of what it was like then,
this is the way it is today. Jackson had gotten the impression from various
discussions among the Justices that they were going to castigate the South, but don’t
forget that those discussions went all the way back to when Vinson was Chief
Justice. Jackson had not realized that Earl Warren, the politician, was going to fully,
understand that situation and after a thorough and complete review of the Fourteenth
Amendment was going to cast it just the way Jackson would have liked to have seen
it cast.

I neglected to mention that during the period before the opinion, a
special committee of law clerks was appointed by the Chief Justice to do, how shall
I say it, “side work”. A part of the committee looked into the Fourteenth
Amendment and wrote a complete and thorough history, finding everything on both
sides in relation to the issue. The Court was also interested in the practical effect of
doing away with segregation, and it asked me to do some maps of typical towns, to
show where black people live and where white people live and where their schools
were located, and so forth. And I did a series of those. I remember particularly
Spartanburg, South Carolina. I had to get all kinds of materials together and do my
own map, which showed where people lived in conjunction with schools. After I
got through, they circulated those maps among the Justices, and each one would
place his initials at the top to show that he had seen them. So that was the kind of
thing going on, really outside the contours of the case. But the Court was concerned
about what it was doing, what the result would be. I think it’s fair to say that
neither the clerks nor the Justices knew whether blood was going to flow in the streets, whether there were going to be riots or a revolution or whatever, and that’s why Earl Warren worked so hard on getting it unanimous, because he knew that if there was even a three-line dissent from one Justice, the people who were against this result would grab onto that dissent and try to use it to their advantage. So he was very clever in imposing on all the Justices to give up their last remnants of dissent and to join in this opinion.

Mr. Kapp: And what was the thrust of your memorandum to Justice Jackson?

Mr. Prettyman: I thought two things. First of all I thought the Justice gave short shrift to the intelligence of the American people. I forget exactly what he said, but it seemed to me that he was saying in effect that people would never agree with this. And my point was that, of course they would agree with it once they saw that it was proper, the thing to do, and what they were called upon to do -- that people loved the country and they were not going to see it grow apart on the basis of this decision. My other problem with it was this: He was, of course, one of the great writers in Supreme Court history. But this opinion was not well written. It did not hang together well. And I think that was because he did it out of anger and not out of cool perception. So there was a list of things that I thought were wrong. Again, I have to emphasize that Jackson was a great reader -- he had read everything. But he had virtually no schooling, and he never graduated from college,
and he only went to one year of night law school. His schooling was in the books. He read everything and he learned to write and to speak -- he was a great advocate -- through reading and listening. But the result was that while his writing was dramatic, and he had wonderful similes and metaphors and so forth, his writing was sometimes not quite grammatical, so that your job as clerk was to make sure that he used the language correctly. I really hesitate to say that, but it was as if Churchill wrote as he did except that he didn't understand all of the rules of grammar. So Jackson was a wonderful writer, but he did require editing and he knew it, and he depended upon me to do that so that he would not be embarrassed. Which was one of the joys of the job, because I'd been on a newspaper and on law review, and I could edit. I could never, never begin to write the wonderful sentences that he did, but I could take the ones he wrote and make sure they were just right.

Mr. Kapp: Do you recall at the time what your assessment was of the Court's opinion in the Brown case and what you expected with respect to the impact of that decision?

Mr. Prettyman: Well, I've already indicated that no one knew what the impact would be. We had no idea. On the one hand, people could simply accept it and move on, which we thought was highly unlikely. Or they could object for a while, strenuously, vociferously, but then settle down and accept it. Or they could say "no way," and, as I say, have blood in the streets. We really had no idea. I certainly didn't. The reason I liked the draft opinion -- and it was very similar to
what ultimately came out -- was that it seemed to me it had a rather calming feel about it. It didn't attack anyone. It simply said, look, we've had a long history, we've gone through a lot, things have changed, no matter what you might say about what Negroes were like 50 years ago or 100 years ago, you look at today's world, and in today's world it simply is not permissible to separate people in school solely because of their race or color. It was just that simple, not very complex at all. I personally have always thought that the most momentous decision in Brown v. Board of Education was the decision to take the case, because once it was taken I simply did not understand how five Justices in 1954 could say that it is permissible solely on the basis of race and for no other reason to force people to attend separate schools. That to me was inconceivable, and yet several of the Justices were prepared to rule exactly that way right up until the end.

Mr. Kapp: Well here we are, I guess 42 years later and looking back with the perspective of time, have your views with regard to the opinion changed in any way?

Mr. Prettyman: Not in regard to the opinion. I think that the opinion was exactly right for the time and place, both in terms of result and in terms of how it was written. There's been a lot of commentary about how it should have been more legal, it should have had more footnotes, it should have talked more in terms of legal philosophy, and so forth. I think that's exactly wrong. This is an opinion that anyone could understand, and if you disagreed with it fine, but there it was on
its own terms, not very convoluted. And incidentally the famous footnotes were strictly an afterthought. The opinion in no way depended upon them. I think it was right for the time, and it essentially accomplished its goal. I don't think anybody could have foreseen how events would have unfolded thereafter. After all, the concept of the opinion was simply that government -- federal or state, city-wide, county-wide or whatever -- could not force people to separate. But that, of course, quickly evolved into integration and busing, which were not foreseen at the time. That in turn led to the era of affirmative action, and of course now we're in an era of reaction to that: the Justice Thomas view that race cannot be considered at all, even to help people who have been disadvantaged and discriminated against. So in a strange way we seem to be coming full circle, and I have no idea where all this is going to lead, but no one could have forecast in those days, in 1954, that we would have come anywhere close to how all this has evolved -- certainly not me.

[Laughter]

Mr. Kapp: You had started to note the death of Justice Jackson and the events that occurred in its wake for you. I wonder whether you would tell us about that.

Mr. Prettyman: I assumed, of course, that when the Justice died, I would be moving very quickly back into practice, or not back into it but into it for the first time. And I began to make plans to that effect. But Justice Frankfurter intervened. [Laughter] I had also had him down to Virginia, and he and I had
became very good friends during my Jackson clerkship. He had spent a lot of time in my office. He got the impression that if he could convince me of a point, I could convince Jackson of the point. So instead of going to Jackson, he would come to me very often. And of course that wasn’t true at all, I wasn’t able to convince Jackson of anything that he didn’t believe but Frankfurter enjoyed it, and so when Jackson died, as soon as John Harlan had been appointed to replace him, Frankfurter sent word to Harlan that he ought to use me, that I was experienced and so forth. In the meantime, it took Harlan almost five months to get confirmed, and during that whole period, from the time that Jackson died until Harlan came on board, Frankfurter used me as his third law clerk. He already had two, and I was his third law clerk and we worked together wonderfully. A lot different than Justice Jackson. Justice Frankfurter had a photographic memory, he could go to a row of books and pick out a particular volume and then turn to a particular page and find exactly the citation he was looking over. Just extraordinary to work with. He would dictate in a funny fashion, not just to his secretary but to his law clerk, and he loved to argue about everything. He was an amazing man, very energetic, not loved by all of the other Justices. I once asked him why Justice Douglas hated him so much [Laughter], and he said, “Because he knows I despise him.” There were antipathies on that Court, and some not as disguised as later antipathies. So I worked with Frankfurter, and that was during the period when they were struggling with the decree in Brown. In the meantime, I had met Justice Harlan,
and he had written to me and asked me my views on this and that. You know, just on where the case was going and what I thought about it.

He arrived on the scene, and I finished out my second Term with him. He was very different from the others. He had come from a large New York law firm. He was used to working with the best and the brightest. He didn’t care anything about personality. He wanted the smartest people. I could never have gotten a job with Justice Harlan if it had started the other way around. [Laughter] He demanded the best, he was intellectual. But although that sounds kind of cold, he wasn’t, he wasn’t cold at all, it was just that he was more workmanlike than Frankfurter or Jackson. He was a lawyer’s lawyer. There was not much emotion in his work, in the sense that things that bothered Warren and Douglas never bothered Harlan. He went straight to the heart of the legal matter as he saw it. He wrote well. He was perhaps more pedestrian in a way than Frankfurter and certainly more so than Jackson. But it was good stuff. It built upon itself, and people have admired his opinions I think quite correctly. It was a formal relationship to begin with and then, as his eyes began to fail later, and his wife became ill, we became quite good friends, and the relationship mellowed. I remember I took him to the Alfalfa Club Dinner once, and he just had a wonderful time even though his eyes now were definitely failing, and we sat in his home afterward long into the night.
All three Justices were extremely able persons. You would have expected one out of the three to be inferior in some respect, but it just wasn't true. They were all marvelous men, and each should have sat on the Supreme Court.

Mr. Kapp: Was your relationship with either Justice Frankfurter or Justice Harlan such that you could have written the memo to them that you wrote to Justice Jackson, do you think?

Mr. Prettyman: I could have made the same points but I would have had to do it a little more diplomatically. Frankfurter would have turned around and torn my memo apart. [Laughter] Harlan would have been hurt at a few things. But I wouldn't have made different points if each of them had handed me the same draft; I just simply would have written it slightly differently. I always thought that my job was in no way to try to show a Justice how to vote or what he should feel about the case or where he was going. My job was to hammer him so hard that he would feel really good about how he was coming out. Even if he and I disagreed completely, by talking it through he would know more and more that indeed he felt this way and this was the way he was going and that the arguments against him wouldn't stand up -- that he'd beaten me at every turn -- and that was my job. My job was to face up to him and to fight with him, and if occasionally he would slightly change his mind about some point, that was fine. But that really wasn't the game. The game was to talk it out, because I found that each of these Justices quite remarkably talked their way through cases and by being challenged found that they
were even more right than they thought they had been. Or, if challenged, became a little less certain, and then wanted to do a little more work. But to challenge them was what my job was.

Mr. Kapp: Justice Frankfurter, of course, was a teacher by profession. How would you compare the three Justices from the standpoint of their role as teachers of you as a young lawyer?

Mr. Prettyman: Frankfurter taught directly. I mean he would challenge me, and he would say you’re not aware of how this theory developed. You don’t realize that fifty years ago it was something else and then this came along and that came along and here’s where we are today. And now that you’re informed, you of course can reach the conclusion that I had told you to take in the first place.

[Laughter] Jackson was by example. Jackson talked with me mostly about politics and gossip and sometimes about the law. But Jackson was much more internal and guarded. I may have mentioned that when he was in the Solicitor General’s Office, his own staff never knew what he was going to say in oral argument, and they used to troop into the courtroom to hear what he was going to argue. Even though they’d worked on the briefs, he had no moot courts and he never told them in advance. And so that’s what it would be with me, that we would argue once the case came down to the end, and he was actually going to write it, we would argue back and forth. But otherwise he didn’t explain things to me, so he did not teach that way. He taught by example. When I would read a sentence or a paragraph and I would
marvel at it, I would learn something from that. I learned about how his mind worked. For example, at the end of your cert memo, you put “Grant” or “Deny,” which was your way of saying, not so much what you would do or what you thought, but what you thought the Justice would want to do. The vast majority of time you would get it exactly right. But I remember one case where he came in and threw my cert petition memo down on my desk and said, “This is outrageous.” I’d written a short paragraph, and I couldn’t figure what in the world this was all about. And he said, “Take it off the dead list” -- the dead list was a list they circulated of cases which were not even worthy of discussion at conference, but any Justice could take a case off the dead list, which meant that it would be discussed in conference. I looked at this memo, and it was about a boat had been out in the waters and a fire had started on deck. The people on deck, including the captain, took one look at the fire and jumped overboard and started swimming away. But the people below deck didn’t know that the boat was on fire, so they just continued working, and finally when nobody came around they went up on deck, the wind had shifted, it wasn’t as bad as they thought it was, and they put out the fire. And by the time the captain and others had come back with fire boats, the people below deck had claimed the ship. [Laughter] The fight was over whether the ship was legitimately theirs.

As I remember it, the holding below was that they were not entitled to the ship. Now why this was a great federal question, why this so outraged Jackson, I never learned. Whether it was some event in his childhood in the bathtub, you know,
with a toy boat or whatever, he never told me. [Laughter] He never told me what it was, but it just set him off, and I understood from others later that he made a big fuss about it in the conference, and of course no Justice voted for it, and it just died. So you can't always guess how your Justice will vote -- that's what I'm saying. But on the other hand, most of the time you can.

Mr. Kapp: What about Justice Harlan as a teacher?

Mr. Prettyman: Yes, I would say more so than Jackson, not as much so as Frankfurter. For one thing, he didn't talk as much as Frankfurter. Frankfurter talked all the time; Frankfurter was wound up as soon as he arrived at the office, and he was going all day long. Harlan was more studious, he spent more time reading and thinking about things. But on the other hand; when you talked he would spell out his reasoning and where he was going and how he was getting there, and why he thought the dissenters, or whatever, were wrong. And I loved the way his mind worked. If you had a senior partner in your firm whom you particularly admired, he would have the qualities of a Harlan because he would be judicious, he would have good judgment, he would take it step by step, look at each angle and then come to the right conclusion. He was wonderful to watch and to listen to.

Mr. Kapp: Did you detect any differences between the three men in their approach to the judicial function?
Mr. Prettyman: Yes, as is obvious, Justice Frankfurter thought that most business before the Court should not be before the Court. He had what we today call judicial restraint as his lodestar. He objected violently to a lot of the cases the Court took. [Laughter] There was one incident, one day, where he was on the bench, and they used to write notes in those days. They had people up behind the bench who would take notes out to people sitting in front. And he sent me this note which said, in effect, "I have such disdain for this case and for our taking it that I am not going to ask a single question." There had been a story in, I think, Time Magazine about Albert Einstein and some jelly beans, and I don't remember what the purport of the story was, but he'd been all mixed up in some jelly bean controversy. So I sent a note back and said, "I'll bet you 25 cents and some jelly beans that you can't do it." Well, with that he turned his chair around so that the back of the chair was facing the fellow who was giving the argument. And he sat there and he stewed and he fidgeted and his chair was going back and forth, and he turned around finally and he didn't say anything, looking around the room. Then finally the advocate said, "If there are no further questions...," and got almost to his seat when Frankfurter blurted out, "Do you mean to tell me...," [Laughter] and asked a question. And with that he saw that I thought I had won the bet, and he sent me a note saying that the advocate had finished his formal argument, and therefore Frankfurter had won. And I sent back a note saying, "There's no way he'd finished his argument -- he didn't finish his argument until he had stopped talking.

-98-
He hadn’t stopped talking, hadn’t gotten to his seat, so I win.” Justice Black, sitting next to Frankfurter, had become aware of this controversy and wrote me a note saying that the advocate had not finished his argument and “I rule that you win.” At which point Frankfurter sent me a note saying, “Since when is one vote on this Court determinative of anything?” [Laughter]

Mr. Kapp: What about the approach to the judicial function of Justice Jackson and Justice Harlan?

Mr. Prettyman: Neither was in the Earl Warren school of judicial intervention, if you will. Neither believed in leaping into situations unless you were absolutely compelled to. On the other hand, they were not of the Scalia-Thomas-Rehnquist school of today either. They might disagree with others as to what was truly a federal question. But they did not hesitate to take a case and decide it when they thought that the public interest required it, that it was an important issue that the lower courts would be confused about. They were somewhat like Justice White in this respect, who wanted the Court to take more cases. They wouldn’t have wanted the Court to take as many cases as he did, but they would agree that when the lower courts were in confusion, the Supreme Court was the only court that could take it on. And that indeed it had a duty to do so. But they did not think that virtually every issue required Supreme Court review. Neither of them thought that because an injustice had been done, the Supreme Court had to review it. Both of them looked at it more as how important was the issue overall, to what extent
were the lower courts in confusion, rather than has some individual been done a serious injustice.

Mr. Kapp: Did you have any kind of relationship with Chief Justice Warren when you were there?

Mr. Prettyman: Primarily in connection with the Brown case. I just happened to be the messenger there. I thought Earl Warren was a very tough man. I thought that beneath his geniality, beneath his care and concern for the underdog and for the oppressed -- which were genuine -- there was an iron will. His father, you know, was a railroad worker who was murdered, and they never caught the perpetrator. He was a very successful governor but had been behind putting the Japanese in camps, which I think he lived with for the rest of his life. I do not think that Earl Warren knew himself when he came to the Supreme Court, and the best evidence of that is the number of cases in which he voted on the conservative side when he first got there but in which he would not have hesitated to vote the other way once he learned who he was. And this happened to a lot of Supreme Court Justices -- I think, in fact, it's happening to Justice Souter. When you arrive at the Court, you are so used to being a political animal, having to answer to all kinds of people, or having courts over you correct you all the time, that you don't really quite understand what you yourself are when you're left to your own devices. When Earl Warren was early on at the Court, there was a case in which the police had secretly gotten keys to the house of someone who was suspected of wrongdoing, and when
the occupants were not there, the police planted microphones all over the house, including the bedroom, and then listened in until they finally got what they wanted and convicted the occupants. Warren joined the Court in an opinion which affirmed those convictions, but separately he and Jackson suggested that the matter be referred to the Department of Justice. In other words, although there hadn't been a constitutional violation, this was questionable enough conduct so that the Justice Department should investigate it, which I'm sure it never did. But can you imagine Earl Warren five years later with a case like that? It would have taken him about 4-1/2 seconds to reach the conclusion that that was totally unacceptable and that the convictions had to be reversed. So he was emerging as his own man after he got there; he kind of took hold and found out what it was that he believed in. While he was the kind of person who would genially say "good morning" to the guards, he also was a man who could turn very quickly against somebody who made a mistake. And all I'm saying is that he was a much more complex personality than I think most people have recognized.

Mr. Kapp: Well, when you look at the long history of the Court and the great Justices of the Court, how do you feel Chief Justice Warren stacks up and how do you expect history will view him?

Mr. Prettyman: Well, I'm just not sure that history is going to be very kind to him. I think he did some wonderful things, and I think Brown itself stands as a monument that no one else probably could have created. Despite the apparent
simplicity of that opinion, I’m not sure anybody else could have carried it off. I think his heart was in exactly the right place. I think he stood basically for principles that I believe in. But I come from a family where judging means that you look at all aspects of the case and really try to reach the result that the law requires, rather than what the judge happens to be feeling. You can’t govern your life or your business decisions or the other day-to-day matters that you engage in by feeling alone. I think there have to be rules. And I’m afraid that history may say of Earl Warren that he was reactive to cases, that he so much wanted the right result as he saw it that he was prepared to rule in ways that may have reached the right humane result in a particular case but that created a lot of chaos in the law generally.

Mr. Kapp: Do you have any sense of how your Father assessed him, again as a Judge?

Mr. Prettyman: None. I know they knew each other. I have a picture of the two of them in my office together, but he never told me that, as I remember anyway. But if I were to guess, I think my Father might have said something along the line that I’ve just said, because my Father was a different kind of guy. He himself felt that in some cases if the government or the authorities or the police have gone overboard, they needed to be corrected, and he might use a particular case in order to do that. But he did not believe that in each case you simply tried to reach a result that was necessarily fair. This is so hard to say, because I think the
layman's perception is that indeed the Court's function is simply to be fair, and of course in one sense it is. But what I mean is that sometimes in order to bring cohesion and stability to human affairs you have got to rule in ways that in some individual cases turn out not to be fair to the individual.

Mr. Kapp: When you look back here at your own career in the law, how do you evaluate the impact of your Supreme Court clerkship experience?

Mr. Prettyman: I don't know how to over-evaluate it. I mean it's just had such a tremendous impact on me in ways that I don't fully understand. I don't see myself doing something this afternoon and saying ah, I learned that from Justice Jackson. On the other hand, I think I have a broader view of the law; I have an understanding of what makes judges tick; I have some concept of what decides cases -- of what you shouldn't put in because it might offend somebody, as opposed to the telling point that is going to convince somebody. I have not only seen judges question advocates, but I have seen and heard their reactions, their innermost thoughts. I have seen Justices come from an argument and say, "That was outstanding and I hadn't thought of this, and I really think that this is important." Or I have seen them come from an argument saying, "Well, I was tending toward this way [Laughter] but the advocate disabused me of that idea." So I have a better feel for what's important and what isn't, and I think that's invaluable. In writing a cert petition, when you have personally written memos in well over 5,000 -- probably closer to 10,000 -- cert petitions, you just get a second feel as to what's
important and what isn’t. You can guess which cases they are going to grant cert in or which they are not. And I don’t mean for a second that I know all the time or anything of that sort. But I’m just saying that you get a better feel for it than if you haven’t gone through that particular experience.

Mr. Kapp: How do you compare the operations of the Court today with the way the Court operated in the days when you were clerking?

Mr. Prettyman: The two things I think of immediately are, one, I have heard Justices today both privately and publicly complain of the lack of collegiality.

Mr. Kapp: Civility?

Mr. Prettyman: No, not that. The fact that they operate so separately, that they operate within their own offices. That there’s so little communication except by writing. Most of them felt when they came on the Court that there’d be a lot of sitting around over lunch or over dinner or at the conference table, day in and day out, talking about things. Whereas there’s very little of that. I do think that there was more of that in my day, although still not as much as the layman might think there was. But there was wandering between offices and they would have functions and they operated a little less as nine monarchs, and more as the round table.

The other really important distinction is in regard to the accessibility of the Court in those days. I mean that they had no detectors, they had very few guards, and I don’t think it occurred to people that anybody could or would attack
the Court or any of the Justices. But today there are guards all over the place and there really is a serious fear that somebody might try to lob something in there and destroy the Court or the courthouse. And it means that whereas in the old days I could just walk anywhere, you know, open gates and go anywhere, now it's very screened off, and I personally think that one of the reasons that the Justices do not want cameras in their courtroom is for safety reasons. That is, the way it is today, virtually all of them are unknown. Justice Stephens can go out for a walk around the courthouse, and nobody knows who he is. Except for Justice Thomas, who has been in the spotlight a lot, most of them are never recognized, and I think they have a fear that if they became public figures -- in the sense that they appeared on the television all the time -- it would invite unwelcome intrusions and attacks that otherwise don't now exist.

Mr. Kapp: Do you think there's any more or less ideological conflict today than there was then?

Mr. Prettyman: It's of a different kind, perhaps at a different level, but essentially no. That is, I think that there were conflicts between, say, Black and Douglas on the one hand and Frankfurter and Vinson on the other; I can divide up that Court into various groups in the same way that you can divide up today's Court. There was civility, however, in those days that perhaps to some extent is lacking today. You rarely saw attacks in opinions, although one exception that immediately springs to mind, of course, is Justice Jackson's objection in the labor
cases to Black’s participation that resulted in the Black/Jackson feud, and there
Jackson was very intemperate. But the tone of the decisions, I think, was somewhat
more civil in those days than in some of the opinions today. And I’m sorry about
that, I hate to see it.

Mr. Kapp: At some point I know you edited or participated as co-
editor of Justice Jackson’s papers. Could you tell us about that?

Mr. Prettyman: He had drafted a book, and had come close to
concluding the drafting, but he had not put in citations, and some of his work was
just in draft form. The Supreme Court in the American System of Justice, which
was going to be a series of lectures at Harvard, but he died before he could give the
lectures, and his son, Bill Jackson, and I thought it was sufficiently finished so that
we could conclude it. Which we did, and I think it gave a clear statement of
Jackson’s views about the role of the Supreme Court.

Mr. Kapp: Did Justice Jackson speak at all during your tenure as his
clerk of his experiences at Nuremberg?

Mr. Prettyman: Very little. Occasionally something would come up,
like some reference to his son at Nuremberg, or his secretary Elsie Douglas’s
experiences at Nuremberg. And very, very occasionally in a case, a reference to,
well, that’s the kind of things that the Nazis did as we found out at Nuremberg.
Things like that. But in no detail. He didn’t sit down and talk about what it was like
to be the prosecutor in Nuremberg. I think it was a wonderful experience for
him, although whether he was disappointed by his cross-examinations in a few instances, I don't know. He was later criticized for that. On the other hand, his opening and closing arguments -- if you ever get a chance you should read them -- are among the finest examples of advocacy in the English language; they are just absolutely wonderful. It's interesting that he probably was not designed to be a trial man, even though he had practiced law in upstate New York, but rather designed to be an appellate advocate. Which he principally was as Solicitor General, and a wonderful one. I've written an article on Justice Jackson called "Solicitor General for Life" because that's what Brandeis said he should have been. And partly because he had a rather wry sense of humor, he sometimes seemed not to be taking the case [Laughter] terribly seriously, and I don't mean he wasn't, but what I mean is that he had a way of communicating events which made everybody feel that we were all in this together -- he and the judges -- and let's work through this, and he could say things with some humor and get away with it. A wonderful advocate.

This concludes the interview held on July 15, 1996.
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson L.L.P. on the 4th day of September, 1996, shortly after noon.

Mr. Kapp: Barrett. You spent much of your career at the Washington law firm of Hogan & Hartson. I wonder if you could tell us how you came to be affiliated with Hogan & Hartson?

Mr. Prettyman: One of my classmates in law school was Stanley Harris, who later became a judge on several courts here in the District of Columbia and the United States Attorney. And we had become good friends, and when it was time for me, during my clerking days, to begin thinking about what I was going to do next, I was contacted by Stan, who had put in a good word for me at Hogan & Hartson, and he suggested that I come there. I learned later -- I did not know this at the time -- that when word was circulating about me at the firm, someone, and I believe it was Nubby Jones, raised a question as to whether the firm should take me or not because, he said, “If he doesn’t work out, how do we get rid of him? [Laughter] He’s the son of a D.C. Circuit Judge, and it would be very embarrassing for us if we had to kick him out.” But fortunately for me, a counter view prevailed, and I think the thing that swung it for me in terms of Hogan & Hartson was a call from Joseph J. Smith, Jr., who at that time was a partner at the firm in the
antitrust area. He said that he had a huge antitrust case involving Pillsbury Mills, that he was almost the only one working on it, and that if I would come to the firm I would be putting witnesses on the stand in a very short time and would have great responsibility in the case. That appealed to me a lot, and so I did apply and was accepted, and I did come with the firm during 1955. And, I might say, I was indeed putting witnesses on the stand very shortly. I probably should have been disbarred. [Laughter] But it was a huge Section 7 antitrust case, involving Pillsbury’s acquisition of several companies, and I spent a good deal of time interviewing potential witnesses around the Southeastern United States, counting cake mix types in stores, and then putting witnesses on the stand in this proceeding before the Federal Trade Commission. That case went on for some thirteen years, and we ultimately won it in the Fifth Circuit on rather unusual grounds.

Mr. Kapp: Can you tell me a bit about what the firm was like in those days?

Mr. Prettyman: I was around the 26th, 27th, or 28th lawyer, something like that, with the firm. And everyone knew everyone extremely well. You not only knew them and their wives but you knew their children and grandparents. It wasn’t so much that we were socializing all the time, it’s just that you were so close to people that you knew their various family stories and what was going on with them. The office quite obviously was relatively small. We were at 14th and G, which has since been refurbished and looks quite nice today but was, I
wouldn’t say rundown, but it was not in the greatest shape in those days. I don’t quite recall how many secretaries we had, but most of the office work in terms of deliveries and cleaning up and so forth was done by one fairly elderly gentleman. And it was simply like a large family. We were divided up into specialties but far, far fewer, of course, than we have today. In fact, many of the specialties that we have today, such as environmental law and food and drug law, we didn’t even know about in those days. It was in many respects a wonderful way to practice law, very warm and comforting and personal, and yet I myself have not regretted growing larger because we did not have as many of the facilities and services as we have today. You couldn’t leave a draft brief on someone’s desk and expect to see it typed by morning. You couldn’t transmit documents the way you can now. In order to type something that was several pages long, you had to have any number of carbon papers. And of course if you made a mistake, you had to do it all over, and everything took a lot longer. Research took a lot longer. We had none of the facilities that we have today, like Nexis, Lexis and so forth, and so the practice was at a much slower pace -- necessarily so. It wasn’t that the lawyers were not as smart as those today, because many of them were extremely bright. It was simply that the whole practice was necessarily slowed down because things took a long time to complete.

Mr. Kapp: What was the nature of the practice or how would you describe or characterize the nature of the practice in those days? Of the firm?
Mr. Prettyman: Well, as I say, we had departments, but of course they were really small coteries of people. We had a tax department, for example, with Seymour Mintz at the head of it. But my guess is that we didn’t have more than three, four, five people in it. We had an antitrust practice, but that was essentially Joe Smith, George Wise and myself. And there was what you might call an administrative law section. The biggest part of the firm was the trial section, and we were in court a lot. Unlike today, trials really went on in those days. And I remember seeing people like Frank Casey, for example, coming back from court all the time and telling us about his adventures there. So in some respects it was more concentrated and in far fewer areas than we think of today.

Mr. Kapp: Was it predominantly local or national in scope in those days?

Mr. Prettyman: We were thought of, externally, as primarily a local firm. We were just trying to break out of that image. We had a lot of local clients - PEPCO, the Evening Star, Washington Gas Light, Riggs and others. But we realized that a growing firm simply was not going to make it with an image of being a local firm. And so there was a good deal of effort put into obtaining clients outside the city and trying to expand our practice. That did not happen overnight. It really took a lot of effort and time and turmoil for us to shake the local image and to branch out into having not only a national and ultimately an international clientele, but a national and international type of practice where the cases went far
beyond Washington. As I say, that took a long time and it was at least ten years from the time I came to the firm before we began becoming recognized as something other than a first class Washington firm.

Mr. Kapp: In those early days of your association with the firm, who did you regard as the key people in the firm?

Mr. Prettyman: The one who occurs to me first is Seymour Mintz. While Mr. Hartson was still there, he was not as actively into the practice as he had once been, and while he was titular leader there were others whom I thought of as being somewhat stronger in terms of bringing in business and actually engaging in the practice. There were a number of people, and among the more advanced ones, so to speak, were people like Nubby Jones, Ollie McGuire and Duke Patrick. As examples of real leaders in the firm who led groups, brought in business, and were extremely competent, I would, in addition to Seymour Mintz, name Lester Cohen and Paul Connolly as examples of people whom I greatly admired.

Mr. Kapp: And what ultimately happened to Paul Connolly? Did he stay with the firm, leave the firm or what?

Mr. Prettyman: Paul got together with Edward Bennett Williams, a preeminent trial attorney in Washington, who himself had been with the firm prior to the time that I came with it. And they wanted to form their own firm and invited a number of us to go over with them. Some did, such as Dave Webster and Jerry Collins, and some didn’t, including myself. Although I admired both of those men
greatly, I personally was concerned, first of all, that the new firm would not be able to break out of the criminal mode sufficiently and become a true, all-around firm, and secondly, I was quite happy at Hogan & Hartson. I was starting to come into my own, and I simply didn’t see any particular need to make a transition. Not only was I not unhappy but I felt that my ambitions were being achieved a step at a time, so I didn’t go.

Mr. Kapp: Other than the work....

Mr. Prettyman: May I say incidentally that while Paul was still with the firm, he was my lawyer at one point. When my book came out in 1961, a gentleman who had been a hero in the book sued me. This was a former prosecutor who had gotten into trouble and gone to jail, and after he got out of jail he investigated the case of a fellow prisoner and discovered new evidence that saved the prisoner’s life. So as I say he was a hero in the book, but unfortunately he had mental difficulties and ended up back in an insane asylum in Massachusetts, and got out just long enough to sue me for libel. I think he sued for something like $600,000, which scared the hell out of me [Laughter] I could see my house going down the tube and so forth. I got Paul to represent me, and the gentleman fortunately filed in two jurisdictions and then dismissed in one, and on purely a technicality Paul was able to get the case dismissed wherever it had been filed. The plaintiff by then was back in the insane asylum again, but I certainly admired Paul for his very innovative work in that case.

-113-
Mr. Kapp: Well you mentioned your book. You haven't told us the title or the subject matter of the book. Would you like to talk about that a bit?

Mr. Prettyman: What happened was that I wrote what I thought was a book on a very interesting case that my Father had had, and I'll talk about that in a moment. And I sent it through a friend to Harcourt, Brace in New York, and they wrote back and said this really isn't a book, this is more like an extended article. And indeed it was ultimately published in the American Bar Association Journal in a greatly shortened form as an article. But they said, we like your work and we like the way you write and we're very interested in the Supreme Court, and could you write something about the Court that would be of interest to the layman? While I had been at the Court I was always fascinated by the death penalty cases that came through there, certainly not in anything like the number in which they go through the Court today, but still they came along and they were highlighted by special tabs on them, and they kept the Justices up and were of great concern. And so I decided to do a book on the Supreme Court's treatment of the death penalty with the hope that there would be sufficient interest in the various cases so that the lay reader could read it with satisfaction. I went through all of the death cases that had passed through the Supreme Court, going back to a time in the Roosevelt days when people would still be alive and records would be extant, and participants would still have memories of relevant events. And then I did some investigation on a number of those cases that looked promising, to see what had happened after the
Supreme Court decisions. As a result of that, I chose six cases of people who had been condemned to death and whose cases had gone to the Supreme Court. I then did extensive research into each case, in many instances interviewing people who had been involved, and submitted a first chapter to the publisher. The publisher apparently liked it and encouraged me to go on. So I did that book, one chapter at a time, sending each one to the publisher until I had finished the six cases and the Introduction and the Conclusion. I had some wonderful experiences doing it. The book was published in 1961, and it won several awards, including the Edgar as the Mystery Writers of America Best Fact Crime Book of the Year.

I made some friends as a result of that book, at least one of whom lasted until just a couple of years ago. This was a young man who had been a law student in California and in order to make money to go to law school he hired on in a wealthy home to be a dog sitter and baby-sitter and bartender, and so forth. And he began having an affair with the wife in the household, a very intense affair, but it didn’t last that long and she finally threw him out. It had been somewhat of a flirtation for her but it had been very, very serious for him, and one night, it was on the 4th of July, he stepped back into the house and waited for her in her bedroom. When she came in, he began a speech that he had prepared about why she should come back with him. And he was very intense about it, very serious about it, and in the middle of it, since it was very late at night and she had been partying, she fell asleep. He didn’t remember what happened, but he did remember leaving the
house covered with blood. They were never able to find the knife used, but he apparently cut her very badly, choked her, and killed her. He was picked up by the police and questioned for a number of days, and from the very beginning he asked for a lawyer. But he was not given a lawyer. When he was convicted and sentenced to death, his case went to the Supreme Court on the ground that he had asked for and been denied a lawyer, and the confession he had given had been taken involuntarily after several days of interrogation. And in an opinion for the Court which I found quite astonishing, Justice Clark for the majority held that yes, in the ordinary case he would have been entitled to an attorney, but since he was a law student he was presumed to know his various rights, and therefore they affirmed the conviction. And he thereafter came within six days of being executed in San Quentin. At the last moment the Governor, Edmund Brown, commuted his sentence to life without possibility of parole.

At some point during this, I went out to talk to him, because I thought he had an interesting story. And we really became, not close friends, but good friends, and he in fact he wrote an autobiographical section for my book which I included. I, in turn, was helpful to him in getting his sentence later commuted to simply life, so that parole was possible, and I did that only after consulting at some length with the prison’s chief psychiatrist, who assured me that this man had killed in a sudden fit of frustration as a result of a whole lifetime of being rejected; that this rejection by the woman falling asleep while he was giving her his
blandishments was the ultimate rejection of his life; and that he would probably never get another parking ticket. He was not a repetitive criminal, the psychiatrist told me, but rather somebody who had folded under extreme pressure. So I was in contact with Governor Brown, and we ultimately got his sentence reduced, and then years later, after spending many years in the general prison population, he in fact was released from San Quentin. Thereafter, he became a vice president of a small company and as I understand it sat on the boards of two other companies and lived a perfectly normal life until he retired, probably about 8-9 years ago. He ultimately died in retirement of natural causes a couple of years ago. And we were in contact during the whole time, and in fact at one point my kids and I stopped off to see him in California.

One interesting sidelight story to that was that he called me at one point and said, "I've got big news; I'm going to get married," and I congratulated him. And he said, "There is one small problem, I have not told [Laughter] my fiancé about my background". I said, "Well, John, you just simply can’t do that. If you marry her, the luckiest thing that will happen is that some reporter will come up to her door some day and ask, 'How's your killer husband doing?', and the worst thing that can happen is that you simply die and then the papers will print your history and she will learn about it for the first time on your death. You can’t do that to her." He said, "Well, would you come out and hold my hand while I tell her?" [Laughter] So I said that I was going to, I think, Nevada in a few weeks and I
would fly on from there to California and meet her and try to help him through it. By the time I got to California, he had told her. She was just a wonderful woman. It had obviously been a horrible shock for her. So I spent a day or two with them, and as I left she said, "Barrett, can I see you alone for a minute?" And she took me into a side room, she took my hand, and she said, "Needless to say, this has been a terrible shock, but I've adjusted to it. I am convinced that the John I know and love today is not the person who committed that crime." And then there was a long pause, and she looked at me and smiled and said, "But I don't think I'll read your book for a while." [Laughter] So, anyway, the book had a modicum of success. It had wonderful reviews. It never sold enough copies to send me into retirement or give me a chauffeur-driven limousine, but what I liked about it was that -- well, you always worry that something like that is going to ruin your whole reputation and be an embarrassment, and it wasn't.

Mr. Kapp: The title of the book was *Death and the Supreme Court* was it not?

Mr. Prettyman: Yes.

Mr. Kapp: I know that you've continued or you've maintained your interest in the death penalty and have represented people who have been condemned to death and I also know that you're presently handling such a case. Would you like to talk about that a little bit?
Mr. Prettyman: Well, the next thing that happened in the death penalty field was really a result of the book. I had gotten to know Katherine Anne Porter pretty well, which we can talk about a little later. And as a result of that I was with her at a National Institute of Arts and Letters function in New York City when I ran across Truman Capote. I was introduced, and he said, "Well, this is really interesting because I was going to call you." He said that the two killers in *In Cold Blood* had read my book and that they had insisted that he read it, and that he was going to do a TV documentary on the death penalty for ABC. He needed a lawyer to work out the legal problems -- for example, to get permission from the wardens for us to go into prisons, to get permission from the people awaiting to be executed and from their lawyers to interview them, to handle all of those kinds of details. So I of course said I would. He became a paying client. And we mapped out a trip which certainly has to be one of the most schizophrenic, strangest trips I've ever taken, because during the day we would be in these really terrible prisons interviewing people in shackles who were waiting to be executed, and at night we'd be in the very finest restaurants in whatever city we were in, with waiters in white gloves waiting on us hand and foot. It was a very strange trip. We interviewed not only prisoners but lawyers, such as Ed Bennett Williams, and judges, such as Skelly Wright, and governors, such as Ronald Reagan who was then Governor of California. This would have been in the mid-1970's.
And that in itself is an interesting story. We arrived at Reagan’s office late one morning, and he said, “Oh, let’s don’t do this right away. Nancy’s got some lunch for us out at the house. Let’s go out there and we’ll worry about the interview later.” So we got in a car, and he was then living not in a governor’s mansion but simply in a house out in a neighborhood. We arrived, and Nancy Reagan was on the doorstep, and we went in -- it was Truman, myself, Pidey Gimbell (whose husband did the shark movie and who was handling the sound for us), and Nancy and Ronald Reagan. And we sat around the dining room table for what must have been a couple of hours, having some wine and a great lunch, with Reagan telling us these wonderful stories about Hollywood during the War and old Hollywood stories before and after the War, and he was hilarious. We had a wonderful time. Afterwards, at ease as a result of lots of good wine, we went back to his office, and I, for some reason, conducted most of the interview. I’m not exactly sure why. But at one point I said to him, “I understand that you are strongly in favor of the death penalty.” He said, “I certainly am,” and I said, “Well, do you believe that it actually works as a deterrent to crime?” And he said, “I do. In fact,” he said, “I know of one instance where somebody was down on his back with a knife to his throat, and he yelled at the criminal, ‘don’t do it, don’t kill me, you’ll get the death penalty.’ And the fellow dropped the knife and ran away.” And I said [Laughter], “Well, if you believe in it this strongly, I assume you are in favor of bringing it home to people. That is, the deterrent aspect works best when people are really aware that they are
going to get the death penalty and what that means." And he said, "Yes." And I said, "So I assume you favor putting executions on television." And there was a long silence, and he looked at me finally and said, "No I don't." And I said, "Well I don't quite understand. I mean, what could bring it home to people, what could make it more of a deterrent, than their actually watching somebody getting executed?" He got quite upset. For some reason, he had not thought of it, and he really didn't have a ready answer. He knew he was opposed to televising, but he had some difficulty articulating exactly why that would be a bad idea. In any event, the interview sort of went down hill from there [Laughter], and it didn't last as long as we'd hoped it would.

That tape had a very strange history. It got back to ABC just at a time when they were having a big shake-up in management, new management coming in. They said the film was too grainy and too much of a downer, and they weren't going to air it. And it just disappeared. Years later, word began to get around that it was in existence, and a great deal of interest centered on it. I had heard that it was shown in Canada once but never on U.S. stations. Then I began getting calls from ABC and from other people asking where in God's name this tape was, because it obviously has a great deal of historical and other interest now, and as far as I know it's never been located. Lord knows where it is. It's probably in somebody's vault somewhere, but to this day I don't think it's been shown on television. And I've certainly never seen it or heard more anything about it.
Mr. Kapp: We’re still I think talking about the death penalty. Maybe we’ve gotten side tracked a bit here but --

Mr. Prettyman: Oh, I think I should complete that story because it did result in one unusual case that I had. We interviewed a fellow out in Colorado waiting to be executed. His name was Garrison. And I had talked to his lawyer, of course, about getting permission to interview him. When I got back to my office after the trip with Capote, I received a call from his lawyer, who said, “There’s nothing more I can do. He’s about to be executed. If you want to take over, you can, but I’m washing my hands.” During our visit to Garrison, while riding to the prison, I had heard a strange story to the effect that his trial attorney -- not his current attorney but his trial attorney -- had been disbarred for conduct apparently having nothing to do with his particular trial. When I looked into it now that the case had in effect been tossed into my hands, I found that indeed his trial attorney had been disbarred for stealing typewriters and various other kinds of office equipment during the night. He would sneak into offices and steal these things, and that was concurrent with his representation of Garrison in his first degree murder trial. So his lawyer was representing him during the day and going out and stealing all kinds of equipment at night. And we did get a stay in the Supreme Court and ultimately they reversed, at least in part, because you couldn’t have that kind of dual reputation where a lawyer’s supposed to be giving his best attention to a first degree trial when his real interest is in protecting himself from getting
arrested. So that was one matter that resulted directly from that series of interviews we did.

Mr. Kapp: And you’re still handling a death penalty cases on a pro bono basis?

Mr. Prettyman: Yes, I am. I have a gentleman in Florida whom I’ve represented now -- along with a number of others in the firm, including Walter Smith, Sally Determan, Steve Routh and others -- for about ten years. He’s a very interesting person, and I obviously can’t really tell you about his case because of the privilege, but he’s a very interesting man and I’ve come to know his family quite well, particularly his mother. We’ve helped her get a new set of teeth, and worried about his brothers and sisters, and really almost become part of the family.

Mr. Kapp: Returning now, again, to your early days at Hogan & Hartson. You mentioned your role in the Pillsbury antitrust case. What other kinds of things were you doing in those early days or was that a full-time occupation?

Mr. Prettyman: It look most of my time early on, and I might say that eventually we got a reversal on a very odd ground. The then Chairman of the Federal Trade Commission, Edward Howry, during an intermediate stage of the case had gone to testify before Congress, and Congress had grilled him, really taken him over the coals in regard to this case and why it hadn’t been concluded adversely to Pillsbury before. And one of the points we made in our brief was that he had
been grilled in such a manner that he was no longer capable of exercising his independent judgment in the case. Indeed, the Fifth Circuit reversed on that ground and ruled that Congress had intruded into his quasi-judicial reasoning and that he was no longer capable of an independent judgment. And I argued that case with Joe Smith, and that just happened to be one of the points that I was given to argue, so I was really quite thrilled with that. But that case is still looked upon as somewhat of an oddity, because not many cases have been reversed on the ground of Congressional intrusion into the workings of administrative agencies.

Mr. Kapp: Was your work in those days exclusively in the antitrust area or were you doing other things as well?

Mr. Prettyman: Oh, I was doing miscellaneous things here and there, including some pro bono cases, but I was considered by the firm to be part of and assigned to the antitrust section.

Mr. Kapp: How would you compare your experience as an associate in what was a fairly substantial law firm, even in those days, with the experience of the associates with whom you’ve worked in more recent years here?

Mr. Prettyman: I think today’s associates on the whole are probably smarter, but I also think that they are less sure of themselves and a little bit more removed from the center of the workings of the firm. We always knew exactly where we stood, because if we didn’t we’d go and ask somebody. We knew all of the partners, we knew everybody in the firm. There were no strangers. One thing
have observed over the years is this, and I’ve asked both teachers and students about it and I’ve had it confirmed. In those days, we were extremely anxious to make ourselves known and recognized. If we were given an assignment, we might stay up all night to make sure that somebody knew we had worked on it and that we had ideas and input. It was almost as if we were going around with our hand up all the time. Years later, I had a Supreme Court case, and I got a group of associates together, and I said, “Now here’s my case. And I’ve got to dramatize this situation to the Court, I’ve got to give them some analogies to make them realize how serious a situation this is. I want you to think about it and come to me with your ideas. Don’t worry about how good they are; I’m just looking for ideas.” Now I don’t think it’s just an old man talking to say that in my day, I certainly would have been waiting on the steps for that partner the next morning and given him 10-15 ideas, dying for him or her to look to me -- well, it would have been him in those days -- to look to me as the person with the most ideas or the best idea, or at least somebody who had tried hard. When I gave that assignment to those associates, one or two came up in the hall over the next week and kind of tentatively suggested something. But otherwise, they didn’t come to me at all. And in trying to figure this out, the professors tell me that it’s the same in the classroom, that very few raise their hands, most are not trying to be recognized or known. Quite the contrary. They are trying to fade into the background. I don’t understand this phenomenon, and I may be overstating it, but I do honestly think that there is a
difference in attitude. I don't quite understand how today's associate expects to become known and recognized in the office, much less in the profession. How are you going to get new business unless you're out there in front of people, making speeches and writing articles and being at the forefront of your profession, so that when people think of your area of the law, they think of you? But anyway, as I say, I may be overstating it, but there's a kernel of truth here somewhere about the difference in attitude between associates in those days and associates today.

Mr. Kapp: In what way, if at all, do you think the legal profession has changed in the time between your arrival at Hogan & Hartson and today?

Mr. Prettyman: Too many ways even to mention them all. Certainly civility is at the top of the list. In those days, if you wanted something done, you called your opponent and agreed on the phone, and that was the end of it. You didn't even have to confirm it [Laughter], I mean, it was just done. In the courtroom, there was always civility toward the court and to your opposing counsel. Not necessarily because you just wanted to be nice, but because that was the way to get in the good graces of the judge, by always being civil and accommodating to your opponent. Which did not mean that you didn't fight hard, but it meant you fought well within the bounds of recognized decorum. And I see a lack of that today that I think is deplorable. The whole concept of lawyer advertising would have sent most of my contemporaries to their graves. It was inconceivable that anyone could actually advertise. And of course that's well accepted today among many lawyers.
In those days, the whole landscape looked like a number of small firms, whereas today the tendency is the other way, to have fewer and fewer really small firms, smaller boutique firms, and more and more really large firms. And of course our firm has been particularly successful in bridging that gap, as some others have not been able to do. I think that’s largely because of management.

Mr. Kapp: Many legal observers have commented on the changes that are the product of today’s bottom line orientation of law firms and of the profession. Do you share the view that that has brought about a change?

Mr. Prettyman: I think it has brought about a change. It can be overstated; certainly in our firm, although there has been an emphasis upon hours, I don’t think it’s been taken to the point where family life has been endangered or anything or that sort. That is, I think there is some balance here between the bottom line and the need to have another life. Perhaps it’s not balanced out exactly right, but at least I don’t see management checking the library at 11 o’clock at night to see if anyone’s there. At the same time, there’s no denying that when the hours are totaled up, the people who are going to be rewarded most will probably be those, with some exceptions, who have put in the most hours and brought in the most cases. I don’t know how to avoid that in a very large firm. Here we have over 400 lawyers, and I think to make each lawyer a particularized case, taking into account all personal aspects of someone’s life and practice, is probably impossible to do.

We do encourage pro bono work. We do have a large, active Community Services
Department. People are encouraged to spend time in professional activities, and certainly I have been given a great deal of leeway in my professional life to engage in all kinds of projects that in another firm might be looked down on. So I see the trend, and in a way it makes me very nervous and sad. But again I don’t think it’s been taken to such an extreme in this firm that quality of life has been neglected.

Mr. Kapp: What about, if you were starting out today and had the same multiplicity of interests and the desire to pursue outside projects? To be engaged professionally in pro bono matters? Do you think that would be as possible today as it was in your day? Your early days?

Mr. Prettyman: If I were to begin here today as a young associate? Well, this may surprise you, but I think I could. I think it can be done. It just takes an allocation of resources, budgeting time, a lot of work, a lot of concentration, knowing what it is you want to accomplish, having some idea of how to get there. So long as you were making progress, I think the firm would sit still for it. I don’t think the firm would perhaps be as much at ease at simply letting you go your own way. They’d want some assurance that you were getting something out of it, in the same way that we still encourage people to go into government, so long as the position holds some hope of advancing the person as opposed to just being a way stop where they tread water. That’s an indication that those openings are still there. The difference is that I don’t see that many people willing to take the time,
the trouble, the risk of working at it. They don’t seem to want to write the articles and do the other things that are necessary to make their way in today’s world.

Mr. Kapp: You don’t think that has anything to do with the incentives being in a different direction?

Mr. Prettyman: I’m not sure the incentives were all that much different in my day. It was more personal. That is, I think people who wanted to do that were allowed to do it, but I don’t think the firm was pushing people to get out there and do this, that and one thing and another. I don’t know that that’s all that much different. There were, after all, people in the firm in the beginning who did not ever do any of that. They simply came to work and put in their time and practiced in their field, and that was it. I have no problem with that, and the firm was not down on them for not getting out and doing more. But at the same time, for those of us who wanted to get out and do more and get involved in all kinds of outside activities, there was nothing standing in our way preventing us from doing that.

I can give you some idea of the kinds of things the firm has allowed me to do. I’ve been privileged to serve as the second President of the American Academy of Appellate Lawyers, and I’m still on their Board; as Vice-President and Chairman of various committees of the Supreme Court Historical Society; as President of the Lawyers Club; as Chair of a Committee to write the Bicentennial History of the D.C. Circuit; as Vice-President of the American Judicature Society; as
President of the D.C. Bar Foundation; as a member of the American College of Trial Lawyers; and as a Board member of the Voluntary D.C. Bar Association. I am currently serving as a member of the D.C. Bar Judicial Evaluation Committee; as an advisor to Media Law Reporter; as a Commissioner appointed by the Chief Justice to the Judicial Fellows Program; and as a Board member of the ABA’s Appellate Practice Institute. I’ve also served as Chairman of the Board of St. Albans School, and I’m a Trustee Emeritus of American University. And I have written or co-written over 25 articles for legal journals, papers or magazines, including on how to obtain and how to oppose certiorari, how to argue before the Supreme Court, the First Amendment, punitive damages, and so forth.

Mr. Kapp: Your commitment to *pro bono* representation goes all the way back to, I know, to your earliest days at the firm. Perhaps you could talk a little bit about some of the *pro bono* matters that you handled in those early days?

Mr. Prettyman: The first one I remember so well because it was the first case I argued in the D.C. Circuit. And it was argued in 1956, which was only one year after I came with the firm. It involved a wonderful character whom I got to know named Ella Mae Work, and she had been convicted of virtually every crime in the District except rape and murder. She had a rap sheet going on for pages ([Laughter]), but she was a wonderful personality, I liked her a lot. In any event, one day she was coming out of her front door when two plainclothes policemen were coming up her sidewalk, and of course Ella Mae knew every policeman in D.C.
(plainclothes or otherwise) on sight and so, recognizing them, she went down her steps to an area directly under her front porch and placed a bag in her trash can. The police saw her and came around and picked up the trash can lid and took out some narcotics that were in the can. And the issue on appeal was whether this little area under her porch was within the curtilage of the home and therefore protected by the Fourth Amendment, or whether it was out in plain sight in an area that was not protected. When I read the record, the descriptions of this area were simply not adequate. You could not tell what this area was like under the porch. So I went out and saw it, and then my sister and I went out and took pictures of it -- needless to say, from the best angle. [Laughter] We got the Assistant United States Attorney to stipulate that these pictures could be part of the record on appeal. I don’t know how we did that, but in any event they did become part of the record on appeal, and the Court of Appeals reversed her conviction, relying in part on one of the photographs. The photo showed that the trash can was in a protected area -- although the area was open, the can was under the porch and within the curtilage of the home. A footnote in the opinion said that this photograph was made a part of the record on appeal by stipulation between counsel. Well, you don’t find many of those stipulations today, [Laughter] I can assure you. It’s an example of how we were more civil and more gentlemanly in those days. The majority in that case was made up of Edgerton and Fahy, with Fahy writing. But there was a stinging dissent from then Circuit Judge Warren Burger, who for years kept referring to this
trash can case and what an abomination it was and how it was a miscarriage of justice. He used to kid me about it all the time, right up to a relatively short period before his death. So that was my introduction to appellate practice.

Mr. Kapp: Let me ask just one final question here and that is whether, in those early days at the law firm, before you left for the Kennedy Administration which we’ll talk about next time, whether you felt you had any role models, either in the firm or outside of the firm?

Mr. Prettyman: Within the firm, the person who immediately springs to mind is Seymour Mintz, whom I have admired beyond imagination for all these years and still do. I think he has the most incredible judgment. But he’s not just a lawyer, he’s a feeling, compassionate, understanding person and I have admired him tremendously. Not to say that there weren’t others. Lester Cohen was a gem of a person, and others too -- I’ve already mentioned Paul Connolly. But outside the firm, my Father of course immediately springs to mind. I admired him so much, he was a man of such incredible integrity. And you have to go back to people I guess I’ve already mentioned, like my English teacher at St. Albans, Mr. Ruge, and Joe Kelly, who was my boss at the Providence Journal, and others like that. I’ve also always admired writers and even in those days was just getting to know some people in that area, such as Capote, of course, who had his faults, but I always felt he compensated for those faults with a kind of genius.

This concludes the interview held on September 4, 1996.
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson L.L.P. on the 3rd day of October, 1996, shortly after noon.

Mr. Kapp: I am aware of the fact that sometime in the very early 60’s you left Hogan & Hartson and entered the Kennedy Administration. I wonder if you can tell us how it happened that you joined the Kennedy Administration?

Mr. Prettyman: I’d be happy to do that, although I probably ought to mention two cases that I had just before I went in, if that’s okay with you.

Mr. Kapp: Yes, go ahead.

Mr. Prettyman: Simply because they were each important to me for different reasons. In 1962 I was appointed by the District Court to represent a gentleman named William Fulwood, who was a Black Muslim at the District of Columbia Jail, and this was now in the very early stages of the Muslim movement among African-Americans. He had recently become a Muslim, and he was attempting to have possession of the Koran and to wear Muslim medals and so forth, and the prison authorities denied him that right. We had extensive hearings before Judge Bumita Matthews, who was a female judge from Mississippi, and she held, I believe for the first time in this country, that indeed Muslims have the right to practice their religion, to carry their medals, to have the Koran and so forth, in
prison, and she entered an order to the prison authorities to that effect. And that, of course, has had wide-ranging repercussions since.

The other case was one that I argued just before I left the firm, and that was my first case in the Supreme Court. As I recall, the Chief Justice called to ask me if I would take that case, and it was quite an insignificant one in the law -- it probably has never been cited since -- but it was called Andrews v. United States and I, of course, agreed to argue it and did. I won that case on a very narrow issue as to whether the Court of Appeals had jurisdiction over an attempted appeal by the Government of a District Court order remanding a matter for a hearing because the defendants had not been given an opportunity to speak at the time they were sentenced. I recall vividly that I was absolutely petrified before that argument began, and in fact I thought I was going to get sick, except that the person who was arguing in front of me sat down early and that got me on my feet and I was saved.

The Kennedy connection as I have outlined previously went back to law school where I knew Bobby Kennedy, and then, of course, he subsequently became the Attorney General. I got a call one day, I believe it was from Lou Oberdorfer, who was then head of the Tax Division at Justice and later a Federal District Court judge, and he explained that the President and the Attorney General were extremely upset about the 1113 Bay of Pigs prisoners who had been captured and were in prison in Cuba, following the Bay of Pigs disaster, and they wanted very much to get them back. In fact, even though we were well into December, they
wanted to get them back by Christmas. If the Government conducted this as a Government operation, the stakes were going to go way up, and there were going to be all kinds of difficulties and bureaucratic obstructions and all the rest. So they decided to get together a small group of Washington attorneys, bring them down to the Justice Department, and let them operate out of there, but operate as a private venture. Jim Donovan, a New York attorney, had been negotiating with Castro over the return of these prisoners, going to Cuba quite often. And now John Nolan was going to join him on occasion, and I, and a few others, were going to be working out of the Justice Department attempting to solicit the goods from around the country. My particular job would be to obtain the transportation -- the trains, the planes, a boat, etc. -- in order to get all of the donations from around the United States into Oppalocka, Florida, and then from there on a ship and a few planes over to Cuba. The negotiations were still going on, but the basics had been agreed upon. The negotiations had started out with tractors and ended up with miscellaneous items but principally medical supplies and baby food.

I gave up my practice within a few hours and moved into the Justice Department, and we virtually lived there for the next ten days or two weeks. Then, when we began taking care of the unbelievable number of problems that developed, I moved to Florida and got myself a Holiday Inn room right near the Oppalocka Airport and near the pier where the ship that I had gotten was going to be loaded. When I say unbelievable problems, this has all been written about in books, but,
just as an example, we were going to send drugs to Cuba. If you were going to ship even a single drug, you had to fill out voluminous forms, and there was simply no way with this tremendous amount of material we were sending that we could possibly have filled out all those forms, even if we’d had months instead of a few days to do what we were doing. So we talked directly to the Government people who were in charge of that, and we just cut through all the red tape and decided that we’d use one form, one piece of paper, that would try to list every drug, and that would be it. We’d just list anything that was going, and we somehow got approval for that. It’s amazing when you’re working for the President and the Attorney General what you can cut through if you have to.

Because companies were getting a tax break for the goods they were donating, they caught on very quickly to the fact that they could get rid of a lot of things in dead storage and send them to Florida and take a tax deduction. And consequently, in addition to some wonderful supplies we were getting, we were also getting a lot of junk. You know, everything from snuff to toenail clippers and everything in the world, and that became quite a problem. Finally, Castro got wind of the fact that he might very well be embarrassed by what was coming, so on the night before the ship was going to sail for Cuba, he sent agents over in the middle of the night. And I heard about this just before they got there. I went down in the hold of the ship and had everything repacked, so that the good stuff was on top. The agents arrived, and the press had no idea they were there, and as a matter
of fact never did learn they had been there. These agents looked things over in the ship, and they thought everything was fine, but on the pier itself, because goods were now coming in from all over the United States even as we were with them, they saw some things that they definitely didn’t want. And they would go around and say, “Well, we want this, but we don’t want this and we don’t want that.” But basically they were pleased. They came back to my hotel room and called Castro from the Holiday Inn and reported to me that they had told him that he was not going to be embarrassed and that everything was OK. The police got those agents out of there very quickly and sent them back to Cuba.

Well, the next morning, I got this frantic call from the pier, and our people who were loading the ship said that they couldn’t operate like this, goods were still coming in, and they didn’t know what to pack and what not to pack. They didn’t know whether something had been approved or disapproved. There was no way we were going to get out of there that day if we had to make a decision in regard to each and every delivery. So I told them to just go ahead and pack everything and we’d worry about it later. So they stored everything on board ship. And I called the Attorney General, and I said, “We have a little problem,” and I explained to him that Castro was going to receive a lot of good materials but that he was also going to receive some things that he definitely didn’t want. And in his characteristic fashion, Bobby said, “Well, Barrett, you better go down there and explain to him why.” And the next thing I knew I was on an airplane for Cuba.
We got down there, and Castro came out to the airport. Now the ship had sailed but had not yet reached Cuba. So he and I had a nice discussion. I did not bring up the problem I had been sent there to discuss. Instead, while he was talking to somebody else, I said to one of his lieutenants, just making conversation, "Where is Hemingway's house from here?" And he said, "Well, it's off here in the hills. Would you like to see it?" And I said, "I'm sure I would, but I think I'd better wait for the ship." He disappeared, came back and he said, "Come on, Fidel wants to take you." So we piled into these cars with all these tommy guns and roared off into the hills. We arrived at Hemingway's house, which was completely surrounded by a locked fence, and we couldn't get in. Castro was getting irritated, and these agents were running all over the neighborhood trying to find somebody with a key, and they finally found a gentleman who had been a kind of man-servant to Hemingway for twenty years and had worked with him right up to the end. He did have a key, and he let us in and took us through the house, which was exactly as Hemingway had left it before he went off and committed suicide in the Western United States. There was a bottle of booze on the living room table, and his weight each day written on the wall of the bathroom, and the slats under the bed for his bad back, and it was wonderful. We had with us one reporter, the captain of the ship, the Surgeon General, and myself, plus some of Castro's people. Anyway, we ended up in the kitchen, where the TV was, and the man-servant told us how Hemingway used to watch the fights in there, and they would bet on them. Castro,
who had been talking through an interpreter, began lapsing into English, somewhat broken English. He talked about his relationship with Hemingway, embroidering it significantly. As I learned later, he had met Hemingway only once. So it became rather warm, and Castro was very tired but he blossomed a little and we got along fine. We spent nearly the whole afternoon there, but we left finally and went down the hills, and on the way back to the pier he suddenly stopped his car, we got out, he walked out into this field, and there was a housing project over in the distance. He just stood there, and then you could hear in the background somebody yell, "Fidel, Fidel". And then people began streaming out of the housing project, and we were soon surrounded by hundreds of people, and he introduced us. Back down now to the pier, and they'd started to unload the ship, and fortunately almost the only thing you could see was baby food. It was just right up to the sky, and he was elated, and he ordered that the prisoners could start to leave right away, and in fact I think a flight might have gone out that night. But as a result of the way it developed, I didn't have to do a lot of explaining. I did get in the fact that because of the way we had to load, he might be getting some things he could throw away, but by then he was sufficiently pleased with what he'd seen. So we spent a rather wild night at the Havana Libra, and in the morning I was on a plane out of there.

That was one of the most emotional scenes I've ever been in. I was in this plane, a little prop job, and it was revving up down at the end of the runway, and we couldn't take off because MIGs kept coming in and landing and taking off.
While we were sitting there, this car careens around a corner and out to the plane, and the captain of the ship has just found out that the families of the prisoners -- so we’re talking about thousands of people -- are going to be released too, and they were going to go back to the States on his ship. He was almost hysterical because he had, you know, a couple of toilets and no blankets, and there were going to be pregnant women and grandmothers and everything in the world on this ship. So I got him calmed down and told him we’d send food, blankets and medical supplies for his ship, and just to take it easy. So then our pilot went and revved up the motors again. There had not been a sound on this plane, not a sound. But when the wheels left the ground, pandemonium broke out. It was just wild. People laughing, screaming and crying, hugging you and breaking out cigars and all kinds of things. It was a very, very emotional time. When I got back it was Christmas Eve, and the President had us flown in a jet to Washington, and then he had a car take me to Baltimore, where I was going to spend Christmas with my then-wife and her family. A day later, the President called to thank me personally. So I thought that was the beginning and the end of my experience with the Kennedys.

Unfortunately, Bobby got the impression that because I had dealt with the transportation aspects of this venture, I was somehow a transportation expert. I knew absolutely nothing about transportation. But he called and said he had this problem at the Justice Department, where the people in his Antitrust Division who were supposed to be dealing with railroads and other transportation problems were
not even speaking to the people at the ICC and other agencies who were supposed to be handling the same problems, so everything had come to a standstill. It was a mess, and he asked me if I could come in for six months to be his Special Assistant to get this all straightened out. So I said I would, and I left the practice and became a Special Assistant to the Attorney General, theoretically to work on transportation problems. I say "theoretically" because as it developed, there were all kinds of other things to do as well. But what I did about transportation was a perfectly simple exercise. I simply got everybody in a room. I mean, I brought in heads of railroads, I brought in the chief people at the Antitrust Division, I brought in experts in the field. I just sat down with them, had a series of meetings, found out what the problem was, and wrote the Attorney General a memo with recommendations. And in three months it was all over, everything was fixed. So I made plans to go back. I had no plans to make my future with the Government; I wanted to get back to practice.

Well now, of course, Bobby was convinced [Laughter] that I was the leading transportation expert in the United States, which was ridiculous, absolutely ridiculous, because I really knew nothing about it. But he said that the President needed advice in this area in the White House, and would I go over and be a Special Assistant, particularly since the eastern railroads were in a chaotic state right then -- the breakup of the Penn Central, and so forth. So I agreed to go as Special Assistant to the White House. I had an office in the Executive Office Building, and
although I did indeed deal with transportation matters -- and in fact I was the President's representative on the Interagency Committee on Transport Mergers -- I also spent a lot of time on a myriad of other matters -- anything that happened to occur to Bobby. For example, if he had thirty minutes suddenly open up in his day,

he'd call me and I would call a local high school and tell them we were on our way, and he and I would go out to an inner-city school here in Washington. He'd walk in on classes, or if they had time to get kids together in an auditorium, he would talk to them all about staying in school and how important the future was and how important education was. Which the kids of course just loved.

He also thought that it was horrendous that there were so few play facilities in the worst sections of town, and he got the idea that we ought to build a playground with donations. So I found a whole city block up at 7th and P Streets NW that was being used to store abandoned cars -- whenever the police would haul a car off the street that wasn't claimed, they would just throw it into this block. So we had the cars taken out, and I got O. Roy Chalk interested in it, and we began building a playground. And since we didn't have much money, I got things donated, such as a fire truck, where you could climb up into the seat and slide down. And of course the usual basketball hoops. We built a soap box car roll, where you could roll down a long slide. We got trucks. The largest vehicle ever carried on the streets of Washington was donated; it was a huge tugboat, and we had a terrible time getting permission because when they carried it past the Capitol they were afraid it was
going to fall into the subway that Congressmen use to get back and forth from their offices to the House and Senate. What I thought would be the hardest item to obtain turned out to be quite easy. I very much wanted an airplane in there, because these kids in the neighborhood, of course, had never been anywhere near an airplane. I had been told that in order to get a used airplane, you had to wait eight years. There was a long, long waiting list for these planes, because there was a great demand and not that many of them available. I called an Air Force general from the White House and told him that the President and the Attorney General were interested in this playground and in getting a plane in there. And he said, “Well, how many do you want?” [Laughter] And I said, “I’ll take two,” doubling my ambition, and he said in this very apologetic voice, “Mr. Prettyman, I am terribly, terribly sorry, but I don’t think we can get them there until Thursday.” And I said, “Well, if that’s the best you can do.” [Laughter] So on Thursday we had the two airplanes, and it really was getting to be a very, very wonderful playground. When we were building it, Bobby and I took Cary Grant out to see it. He was in town for a Stay-In-School Benefit that Ethel Kennedy and a group of us had engineered. Needless to say, he got a lot of attention.

Not long after the playground was completed, President Kennedy was assassinated. I believe that the first public event that Robert Kennedy attended after the funeral was the opening of this playground. I remember there was one humorous aspect of that. He wanted to walk there and back from his office, and we were
very fearful. If you remember that period, those were nervous days. We didn’t know what was afoot as to whether there were a lot of assassins out there or what not. So we were going to have a lot of police with him, and he said he did not want any police with him. He didn’t like to have police around, so we dressed the police up in civilian clothes [Laughter], and the pictures of him walking back show him and his huge dog, Brumus, and then these people who looked very ill at ease in their tight-fitting suits, who were all policemen.

But in any event, we had something like 10,000 kids at the opening of this playground. You couldn’t get in there. It was just incredible, wonderful. That story has a very sad ending, in the sense that later, as kids began to get hurt -- as they do on all playgrounds -- the city began to get nervous and began closing various features down, so that the next thing you know it was a very sterile place. It’s still there, and technically it’s still a playground, it still has a plaque with the names of the people who had contributed, but it’s not what it was, and it’s all very, very sad.

The other thing I was engaged in with Bobby during this time was a pool. One of the schools we visited was Dunbar, and while there we saw a beautiful indoor swimming pool that they had closed down. And he wanted to know why it was closed, and they said that they didn’t have any money to repair it. So he asked how much it would cost. And they said something like $35,000. It had been closed for over a year, and you can’t imagine how this hits a Kennedy mind. The police
told us, after all, that when that pool was open, the crime rate was way, way down, because they opened it even in the evening. Parents, as well as kids, could come to use it. It was always used, so there were virtually no criminal offenses in the neighborhood, and as soon as the pool closed, the crime rate shot up. And here for lack of $35,000 they were allowing this pool to remain closed. So Bobby told me to get the money, get it open. What I did, I called up a Catholic bishop here in town and told him that a Jewish group and a Presbyterian group were each going to contribute, and I needed $10,000. And then I called a Jewish rabbi and told him the same thing, and I called a Presbyterian minister, and so indeed they all contributed. We opened up that pool and Chuck Connors, “The Rifleman,” came to the opening, and the kids of course loved that, and we made a big to-do of it. But that was the kind of thing I did.

I also got this idea that since Bobby was so interested in kids staying in school, we ought to have an open letter to school children from their sports heroes, and we drafted a letter directly to the children saying that you’ve got to stay in school, this is important, here’s what it will do for you. If you drop out you probably won’t be a success, and so forth. I just ran across these letters the other day. I thought nothing of it at the time -- they were stuck away in an old box -- but here are letters from Mickey Mantle, Maury Wills, Rocky Marciano, Arnold Palmer, Stan Musial, Jackie Robinson, Gene Tunney, Wilma Rudolph, Y.A. Tittle and, you
know, just a whole group of great sports figures of that time giving their permission
to use their names. And so we distributed this in the schools.

Mr. Kapp: Was your impression of the Attorney General changed in
any way during this period?

Mr. Prettyman: Yes.

Mr. Kapp: Could you talk about that a bit?

Mr. Prettyman: Well, I did not have that clear a picture of him early on
because while I had seen him quite a bit down in Virginia, we were both working
hard and the only time I saw him socially was when it was connected with an event,
such as a Legal Forum dinner. I had the impression of a pretty conservative fellow
who didn’t do terribly well in his classes, but I had no distinct impression of him as a
personality at that time. As I got to know him, I suppose he changed more during the
course of my acquaintanceship with him than anyone else I ever knew. It was like
watching a flower grow in fast forward. You could see changes every day. He
learned. He absorbed information. He had a great deal of empathy once he became
aware of a problem. He was not aware of the extent of poverty even here in
Washington, much less throughout the country, until he traveled and saw it. He was
not aware that his own Justice Department had practically no Negroes in it, as we
called them then -- Blacks and African-Americans today. He changed that very
quickly once he found out, but at first he didn’t know. There were so many things
that he did not know because he had led a fairly sheltered life, with a very, very
well-to-do father. But he learned and he cared, and there was nothing phony about that. He really woke up to things that were going on and that ranged all the way, as I say, from poverty to Vietnam, where he was slow coming to realize the nature and extent of what we were involved in. But once he understood, he spoke out. So I would say that my impression of him changed dramatically, and particularly in the later years, when I helped with his Presidential race, I got even stronger impressions of him. Because in the meantime, while a Senator, he had changed some more, had learned a lot, had espoused new issues and had become a fuller person. He had become a completely integrated whole, a fascinating man. I guess the most interesting political animal I ever knew because, like Nixon, he was basically shy, had very little small talk, concentrated on his duties, worked hard, always wanted to be doing something, accomplishing something, and yet he had people wild about him. I mean I'd never seen anything like the crush that we ran into when we ultimately started his campaign.

I might tell you one little vignette about him [Laughter], which says a lot. When he was running ultimately, and I realize we are pushing ahead here in time, but when he ran for President he was worried about the fact that businessmen despised him, hated him, feared him, and he talked to me about it, and I told him, first of all that I would draft an article that he could run in Business Week or some place like, making people less fearful of him. I did that, and it was published with him on the cover. And I said the other thing I'll do is start bringing
distinguished business people by to see you, one at a time, so you can just chat with them, and they will see that you don’t have two heads, and the word will get out that maybe you’re not as bad as they had thought. Great idea. So the first person I brought in was the then-President of Capitol Records. We represented Capitol Records, and I didn’t have time to talk to him before the meeting, but I met him in New York and took him up to the U.N. Plaza, where Bobby had an apartment. And we went in and sat down, the three of us, and I waited for the conversation to begin and there was dead silence. Bobby just sat there, had no idea what to talk about, and I realized that the President of Capitol Records wasn’t even sure why he was there—his name was Livingston, a wonderful guy, but he couldn’t figure out what was going on. And so I had to finally break the silence and get small talk going, and it was terrible. It was just awful. Finally, I showed Livingston out [Laughter], and in the hall he said, “What the hell was that all about?” [Laughter] And that was the last business person I brought by to see the Presidential candidate.

But Bobby was very courageous. One day when he was in the Senate, he, Ethel, some of their children, another couple and I went on a sailing trip in a borrowed boat. A big storm roared up and in the middle of it a Coast Guard cutter came as close to us as it could--not very close--and a voice over a bullhorn announced that Bobby’s daughter Kathleen had been injured by a horse. Bobby jumped overboard into a terrible surf and disappeared. Thank God he turned up
and somehow got to the cutter. The seas were so bad that the cutter’s front window shattered on the way back, and the boom on our boat broke.

I was also there in Steve Smith’s New York apartment when the decision was made that Bobby would run for President. That was funny because we were all sitting around debating what we should advise him to do when he walked in and announced he was going for it.

Mr. Kapp: When you were in the White House did you have any substantial contact with the President?

Mr. Prettyman: Very little, very little. We’d see him at meetings and a couple of times in the hall and things like that, but no, I didn’t deal one-on-one with him hardly at all. Virtually all of my work was with the Attorney General and through Mike Feldman.

Mr. Kapp: Just going back one step here to your day in Havana. Did you develop any kind of impression of Fidel Castro as a result of that contact?

Mr. Prettyman: I am ashamed to say that the overwhelming impression I had was that he wasn’t going to be with us very long. I really thought that the display of guns, his tiredness, he just struck me as a man on the way out, and of course here we are 30 years later, and he’s the one who’s still around. All the rest are gone. I would never have guessed his durability. He is an intelligent man, a man I think very aware of himself and history, and in fact with an inflated idea of himself and history. He had a great deal of pride, and I thought the way he spun
out the Hemingway connection was interesting -- the fact that he would bother to
make that relationship a lot closer than it had in fact been -- why he did that is
interesting to speculate about. But based on that short experience, I can't give you
an in-depth analysis of him but I certainly had an impression of a leader who I
thought was in some trouble but in charge, no question about that.

Mr. Kapp: You were in the White House at the time of the
assassination.

Mr. Prettyman: I was in the Executive Office Building, I had placed a
call to someone on the Hill and I can't for the life of me remember who it was, but
as soon as I started to talk they said, "No, no, don't worry, we know all about it."
And I said, "What do you mean?" And they said, "About the President being shot."
And that was the first I'd heard. It had just happened apparently, and I put down the
phone and walked across the street to the White House -- you know, there's a little
roadway there between the Executive Office Building and the White House -- and I
walked in and it was like a death camp. It was just awful. People were crying and
sitting and staring, and there was great confusion. I remained there and was there
when Lyndon Johnson arrived in a chopper late that evening, and walked over to the
President's office. I remember very well, and I tell you as shocked as everybody
was by the original news, the sight of him as President coming to the President's
office was, if anything, a greater shock. It brought the whole thing home in a way
that nothing else could have.

-150-
Mr. Kapp: Did you continue on in the White House after Lyndon Johnson arrived?

Mr. Prettyman: I think I was either the first to resign or certainly very close to it. I did not know Johnson. He did not know me. He wouldn’t have been interested in any of the things I was doing. As you know, he and Bobby did not get along, and of course I had no interest in getting into government in the first place. It had all just been a series of flukes. And so once I saw the situation, I got out and went back to the practice.

Mr. Kapp: When you originally went over to become part of the Administration, you worked on a series of railroad issues. Did that have any influence on your subsequent law practice?

Mr. Prettyman: Well, it did in the sense that it got me involved in one or two matters which in turn lead to a number of other matters. The first one, I think, was on behalf of Western Pacific Railroad, and among the first things that came up was a case that they had in the Supreme Court. I worked on that, and then I worked on some extensive hearings involving the Western Pacific. I lived in Chicago at a hotel for almost a year where these very strange hearings went on in the Hilton across the street. I lived in the Blackstone Hotel, and the hearings were in the Hilton because there were so many lawyers you couldn’t get them into a hearing room, so we had to hire out the main ballroom of the hotel to have our hearings. The hearing examiner was a wonderful gentleman but an alcoholic, since
deceased, and so we would start late in the morning and quit early for lunch, and
come back late from lunch, and quit early in the afternoon. So it was tremendously
expensive for everybody involved. He eventually broke his leg one night and was
replaced by another hearing examiner who was very strict. Finally, the two of them
sat together and disagreed on almost every single ruling. But as a result of all this,
the case went on and on. It was almost a perfect example of how you should not try
a regulatory case. But it was very easy living for me. I would get up late, have
breakfast in bed and wander over to the hearings, and I would cross-examine
somebody maybe once a week, [Laughter], and it was an easy life, and I got to
know and love Chicago. A great town. But, as a result of those hearings, the
General Counsel of the Rio Grande Railroad, who participated in the hearings, later
got me involved in hearings involving the Rio Grande. Then that railroad was
eventually bought and bought again and ended up as the Southern Pacific, with a
very wealthy gentleman owning it, and so it led to a series of cases that are still
going on in the firm. We have been involved in a lot of railroad work, all coming
out of that one little hearing with the Western Pacific.

Mr. Kapp: You said that you had resigned from the Administration
shortly after the arrival of President Johnson and I know that you returned then to
Hogan & Hartson. Can you tell me a bit about the nature of your practice on your
return?
Mr. Prettyman: Well, I became a partner in July 1964. I had now argued several cases on appeal, and it had become clear to me that my heart was really in the appellate area. This is something I’ve always loved. To take a confused record, including all the mistakes that might have been made below, and somehow shuffle it up and recreate it into a coherent story and a coherent argument - this appealed to me tremendously. Incidentally, during this period in the mid-60’s I had one of the strangest experiences I’ve ever had as a lawyer. I had been appointed to represent a Miss Johnson, who had been picked up at 2-3 o’clock in the morning on 14th Street in Washington flagging down cars. And instead of being charged with soliciting, she was charged with vagrancy. One of the key phrases in the vagrancy statute was “leading a profligate life,” and I attacked the statute on about eleven constitutional grounds, including the fact that nobody knew what it meant. So at the trial, whenever anybody came to the stand, no matter what they were going to testify about, I would ask, “By the way, what does ‘leading a profligate life’ mean to you?” And of course the answers were all across the spectrum. Most people had no idea, and even if some people gave a wild guess, it was usually off the mark. But the policeman who arrested her said, “Well, I think it means doing something, you know, partially bad, kind of bad, over a period of time.” And I said, “What do you mean by that? Do you mean like going out to the race track all the time?” And he said, “Yeah.” And I said, “Betting on the horses on a regular basis?” And he said, “Yeah, that’s right.” And I said, “Well now, I
understand that J. Edgar Hoover goes to the races on a fairly regular basis and I assume he bets when he’s there. Would you say that he’s leading a profligate life?”

“Yes, sir, I would.” [Laughter] Now this is in Superior Court, and of course the Washington Post never covers run-of-the-mill cases in Superior Court. But with my luck, on this particular day a reporter who had been covering another hearing had wandered into the courtroom and just happened to be there when this occurred. The next morning, there’s a little piece in the Post about Hoover leading a profligate life.

I had two FBI agents in my office at 9 AM when I arrived for work, and they handed me a letter personally signed by J. Edgar Hoover in which he excoriated me for gratuitously injecting his name into a case by referring to his numerous visits to the race track. He said this was an unwarranted use of his name to obtain some cheap publicity. He continued: “The facts are that I only attend the races -- an entirely legal pastime [Laughter] -- on Saturdays and then infrequently. I am usually one of 20,000 persons present, which include officials -- Federal and State -- and of all branches of the Government. Why you should single me out of this large number can only be that you are vindictively inclined or are hard pressed to make a point completely irrelevant to the true merits of your case. In any event, I do not appreciate such despicable use of my name” [Laughter] Well, needless to say, I almost had a heart attack. [Laughter] I wrote him back and tried to explain that it was a great compliment, because I was trying to show that leading a profligate life could not possibly be what this officer thought it was, since the very reputable J. Edgar Hoover did what the officer thought leading
a profligate life was all about. But needless to say, I never heard back from Mr. Hoover. [Laughter] That was quite an experience.

I had some other cases at the time that were quite interesting. I now started getting a series of Supreme Court cases. I ended up arguing 19 of them, and I would love to get number 20, but I don't think I will. And these cases were all over the place; they dealt with no particular subject. I was getting some First Amendment work. I should also mention Jones v. Wolf, which was a seminal church-state case in the Supreme Court. I did some work both for free and for pay for the Reporters' Committee for Freedom of the Press. I was also beginning to represent some writers. For example, I represented Katherine Ann Porter for about the last 20 years of her life. I worked closely with Charles Alan Wright and Clark Clifford on the TWA case for Howard Hughes -- a case we won in the Supreme Court. And I represented Hughes, along with Seymour Mintz and others, in the Clifford Irving matter, when we put Hughes on the phone with a Time reporter to prove that the recluse had never heard of Irving. I represented Rita Hayworth for two years to prevent her from being taken advantage of by the media while she had Alzheimer's, and I met with the Aga Kahn and talked on the phone with Orson Welles about her situation. I represented Yasmin Kahn at the same time. And at another point I successfully represented a Boston Globe reporter accused of
masterminding the Indian revolt at Wounded Knee. So I’ve had some interesting clients, including Lloyds, the Methodist Church, Fotomat, the National Wildlife Foundation. I once did an internal investigation of Olin Corporation to determine whether one of its subsidiaries had been illegally shipping arms to South Africa. And I have already told you about the TV documentary on the death penalty that I did with Truman Capote.

Mr. Kapp: Was Capote himself involved in the interview process?

Mr. Prettyman: Oh yeah, yeah, he was. In fact he was supposed to do all the interviews. The problem is that some of these prisoners had a very adverse reaction to him because of his mincing ways and refused to talk to him, and I ended up doing a lot of the interviews. I think as it ended up, he probably did half and I did half. But he was present during all of them. As I have mentioned, we ended up in California interviewing then-Governor Reagan.

So my work was quite eclectic, quite varied, and there didn’t seem to be any constant theme to it except that, as I say, the appellate work gained my attention more and more and I began to focus on it. One interesting case I should mention was called Jackson v. United States, and again I was appointed by the D.C. Circuit. Some of my most interesting cases, I find, have been those where I was appointed by the court. It was the case of a man who murdered his wife and assaulted another man when he found his wife and the other man in bed together. We somehow discovered that sitting on the jury was a man who previously had had
an affair with a married woman whose husband had caught and killed her. The juror had never revealed that. And we got the D.C. Circuit to reverse the conviction on the ground that it was an unfair trial to have on the jury a juror who had undergone precisely the same type of experience that was being tried to that jury. Amazingly, the panel that unanimously reversed included Wilbur Miller, who I don’t think ever again voted to reverse a criminal conviction; Burger, very conservative; and Tamm, also conservative. So I always felt very proud of that ruling.

Mr. Kapp: What in your mind makes for good appellate advocacy? What would you say about that?

Mr. Prettyman: A complete knowledge and understanding of the record. Serious and long thought about a cohesive theory of the case. You’d be surprised how many people do not have a total theory of their case, and by that I mean a theory that is so complete that it will answer hypotheticals thrown at you in oral argument. Let me give you an example. The case of Plyler v. Doe was a case in which Texas had by statute denied a public education to undocumented alien children. And during the oral argument in the Supreme Court, the fellow representing the State of Texas was asked by Justice Marshall, “Could Texas deny those children fire protection?” He stammered around and finally said that he had no idea. I don’t understand that. I don’t understand how anyone approaching an argument in that case would not know that you’re going to get questions about fire
protection and police protection and all the other things that a state normally provides for its citizens. How could you not know that? He did not have a theory of his case. It didn’t make any difference whether the answer was yes, they could deny fire protection, or no, they couldn’t, so long as he had some reasoning to back up his conclusion, but he had to have a cohesive theory of the whole case so as to show what the state could do and could not do and the reasons for it. Now that’s what I mean by a cohesive theory of a case.

The other important element in preparation is to step back and look at your case from your opponent’s standpoint and from the standpoint of a judge who wants to vote against you. So many advocates refuse to do that, because it’s unnerving; they don’t like to face the unpleasantness of realizing that they have holes in their cases. But all cases do. When I begin preparing, I start writing myself questions. They could be factual questions. They could be legal questions. They could be hypothetical questions. Anything that I don’t immediately know the answer to. It’s not uncommon for me to have over 300 questions by the time I get through the record. Those are questions that I want to have answers to before I stand up in Court.

I also have at least one moot court, and the purpose of that is so that others can throw questions at you that you haven’t thought of. No matter how well prepared you think you are, there’s nothing like having an entirely different mind directed at your case. Even strangers to the case will come up with questions that
you have not thought of. One of my most vivid memories is of a moot court. We had a new associate at the firm who’d only been with us a few days, and I invited him to the moot court just to make him feel part of the firm and so that he could see what a moot court was all about. And low and behold, I was arguing away when he put up his hand and said, “Well Mr. Prettyman, suppose that church had been sold to an unwitting buyer and this happened and that happened and so forth?” And I was absolutely stunned; it was a wonderful question. I had not thought of it. I had no answer to it at all, and I had to say so. Well, I had about a week to go and needless to say, in the shower and in bed at night and in every other spare moment I was thinking about that question, and I finally came up with not a perfect answer but the best that I could conjure up, and by golly I got all through the actual oral argument and was halfway to my seat when Justice Stevens said, “Mr. Prettyman, suppose that church had been sold to an unwitting buyer?” [Laughter] Almost in the same words that this kid had asked the question, and I was able to roll off my answer, very assuredly, giving the answer I had prepared, and sit down. But you know, if the associate hadn’t asked me that question, I’d still be standing there. You learn from that, so I don’t agree with advocates who say that moot courts take away their spontaneity. Quite the contrary, I think it gives you much greater spontaneity because you’re more sure of yourself, you’re more relaxed, you know the type of things that will be coming at you, and you’re better prepared.
I think another thing is self-assurance. One of the things I so admire in John Roberts, one of our partners, is that once he finds out what side of the case he’s on, he becomes absolutely certain, absolutely totally certain, of the rightness of his position. You cannot tear him loose from it, and he approaches that argument as if there could be no answer other than the one he has. I admire that because it gives pause to the judges who are opposed to that view, and it gives assurance to the judges who are on his side, and it’s a good attitude.

Certainly it takes intelligence to be a good advocate. You have to understand the ramifications of your case, you have to understand where dissenting Justices may be trying to take you, what they’re trying to set you up for in order to disprove their position to other Justices. You have to know when and where to concede and when not to; you have to know whether a question is friendly or not, and it’s not always clear. I heard one judge say that you’d be surprised how many advocates fire on the lifeboats coming to rescue them. You know, that lawyers act as if every question has to be hostile, when of course it’s not.

The broad view is just terribly important to see the case in context. It’s not just this little factual situation. This has ramifications for other unrelated cases, other areas of the law. You’ve got to see how it all fits in. You’ve got to make sure, therefore, that you’re not plucking away for a theory that the Justices can’t possibly buy because it’s going to get them into trouble elsewhere. You’ve got to be realistic. You’ve got to know which instincts to appeal to and which to stay away
from. It takes a very whole person to be a good advocate, I think, and of course you have to be articulate.

Mr. Kapp: Have you got a view as to the relative importance of the written brief and the oral argument?

Mr. Prettyman: There’s no question the written brief is the most important element. It’s all there, or it should be. It’s the first thing the judge sees, it’s the last thing he sees if he’s writing the opinion. And if you have not convinced the judge by the time he or she has read your brief, you’re probably in trouble. On the other hand, I have had a surprising number of judges tell me that in a surprising number of cases they have in fact changed their minds. I have heard the figure go as high as a third of argued cases, which I am inclined to question. But I’ve at least heard that. Judges and Justices have said, time and again, that they find oral argument extremely important, even if they do not change their minds; it often affects how the opinion’s going to be written. It’s going to affect what issues are going to be dealt with and at what length. A lot of judges say that they really did not have that clear of an idea of where they stood when they came on the bench, and oral argument helped them decide. So it’s not just changing minds; it’s helping them make up their minds. So I think it is important. It’s also important because many people lose cases. More people lose cases than win cases. By that I mean, they go in and either wholly fail to make their point or make a concession that they
Mr. Kapp: You don’t subscribe then, totally to the canard that cases are never won in oral argument but are frequently lost in oral argument?

Mr. Prettyman: I certainly don’t agree that cases are never won, but I do think that more cases are lost than won. Yes, I do agree with that. But it seems to me you have to take the word of the judges. Lawyers are not very good judges of how judges reach their conclusions. You have to listen to the judges themselves, and most judges would say that oral argument is important. It may not be important in a couple of southeastern states where the judges have drafted their opinions prior to the oral argument. No, it’s not going to make much difference at all. But in cases in the Supreme Court, and I think in most circuit courts, argument can be extremely helpful, and you should always ask for it.

Mr. Kapp: What in your mind makes for a ••

Mr. Prettyman: Excuse me, you should always ask for it if you are the appellant or the petitioner. I don’t mean that you should ask for it if your opponent who is seeking appellate review does not ask for it. Excuse me, go ahead -

Mr. Kapp: What in your mind makes for a well-crafted appellate brief? Can you describe your approach to brief writing?

Mr. Prettyman: Clarity, succinctness, accuracy, a little bit of a flair -- and I don’t mean off the wall, I just mean the judges read so many hundreds of
thousands of pages that if you can be interesting, they love it -- when it’s something that is well written and can catch their interest. They like a cohesive story instead of a jumbled presentation where they can’t really tell what happened. They love honesty, and this is particularly true in oral argument when you confess that there’s a particular point that worried you when you got the case and you found the answer and you hope that answer is satisfactory to the court. That’s very appealing. But they love it when you deal directly in your brief with a very tough point, rather than ignoring it or, even worse, distorting it. If you can get their attention, if you can give them a reason, both in terms of fairness and justice and in terms of precedent, that they should decide for you, then you’ve come a long way toward getting to a favorable result.

Mr. Kapp: When you start on an oral argument, do you ordinarily have some particular goal or objective in mind? I mean obviously you’d like to win the case.

Mr. Prettyman: Five votes!

Mr. Kapp: Right. [Laughter] But there’s not any sort of generalized approach in that sense?

Mr. Prettyman: I don’t think so. You have figured out in advance where your most likely votes are coming from if you’re going to get any, and particularly if it looks close you probably have a pretty good idea of who is on the fence, where the key votes are. So you want to say things that are going to appeal to
the decision-makers, the two or three that are going to make the difference. But I really can't say that there's any kind of generalized approach that you have in mind. You're just trying to give the best damn argument you can. Look, if you're in college and your roommate wants to go see one movie and you want to go see another but you want to go together, I mean you start in with an argument: Yeah, but the stars are over here, and I heard the plot was fabulous, and this director also directed this other great movie, and you come up with every single argument as to why you want your roommate to see this other movie. It's no different in oral argument in court. You are trying to convince. You are trying to make someone who either has no opinion or has an opinion against you rule your way, to give them every reason why they should. The whole game is to persuade. You can't persuade if you are not articulate. You cannot persuade if you don't have down-to-earth and important grounds supporting you. You can't persuade if you unfortunately have the kind of personality that judges don't like. There are a few advocates around who are so arrogant that the judges start in hoping they can decide against them.

[Laughter] That's not very persuasive. But other than that, I really can't say that there's some shiny key to all this.

Mr. Kapp: Any difference in approach between an argument before, let's say, the D.C. Circuit on the one hand, and the Supreme Court on the other hand?
Mr. Prettyman: There are certainly big differences. With the Circuit Court, assuming that you are not en banc so that you have only three judges, you should know how they have voted in the past on matters similar to this one so that you can gear your argument pretty much to what you think their views are. You obviously have fewer questions. There are fewer hypothetical questions at the Circuit Court level, because the judges of course are bound by Supreme Court precedent. If you have anything in the Supreme Court that supports you, you obviously want to make that argument very strongly, and in fact the oral argument may hinge on what that Supreme Court precedent means. What's the application here? In the Supreme Court, you have nine people coming at you instead of three. You have more questions, you have more complicated questions, you have more hypothetical questions because the Justices want to know where you’re taking them and what the implications are for the law generally -- whether you’re getting them into hot water, because, after all, there’s nobody around to correct the situation if you do. The personalities, of course, are different, just as they are from panel to panel on the Circuit Courts. But personalities are very important. You have some judges who can’t stop asking questions. You have some judges who never ask questions. And you have everything in between. So knowing your court is really quite important.
Mr. Kapp: Tell me what you think about the influence of amicus briefs. Do you think that they’re generally useful, not particularly useful, can you generalize about them?

Mr. Prettyman: If it’s an amicus brief from the Solicitor General, it can be extremely important. Extremely important. Sometimes that importance cannot be overstated. If it is an amicus brief from a large group of states, it can be very important. Sometimes an amicus brief from, let’s say, a medical group in a case involving a technical medical procedure could be very important. It gives a different viewpoint, and it makes the Justices feel at ease in an area that they really don’t know too much about. My own feeling is that (a) it almost never hurts to have the support of an amicus brief, (b) most amicus briefs are not worth very much; but (c) they don’t really do much harm. So I encourage them in cases where you can get them -- at least from responsible people. You don’t want just any screwball writing in on your behalf. But an authoritative organization all the way from the NAACP to the Chamber of Commerce, depending upon the case, I think can be of help, and the Court has referred to these from time to time. If you were to take a typical Term and look at all of the amicus briefs filed, my guess is that not over 10% made much difference one way or the other.

Mr. Kapp: What about the Circuit Court level?

Mr. Prettyman: You see very few of them, because Supreme Court precedent plays such a big role there. That’s an interesting question I’ve not
thought much about it because I haven’t seen that many of them, but I would guess
that the import is lesser. I’ll ask a circuit judge about that sometime.

Mr. Kapp: Maybe there’s a difference between an en banc case and a...

Mr. Prettyman: Could be.

Mr. Kapp: ...case before a panel?

Mr. Prettyman: Yeah, could well be.

Mr. Kapp: Can you talk about cases that you’ve handled in the Circuit
Court of Appeals for the District of Columbia? Any particularly memorable cases in
that court?

Mr. Prettyman: Well, one very unfortunate one was U.S. v. Western
Electric, where I was arguing for the telephone companies, and I was up against
Larry Tribe. I made my argument, a tough point in a tough case, and Tribe got up
and engaged in a long, long exchange with Judge Silberman. And it went on so
long, way way past his argument time, that when he sat down I did something I had
never done before in my career; I got up and asked if I could have some extra time.
Judge Mikva was acting as Chief Judge, and he declined. And I lost on my key
point; I lost the case. But I’ve always felt that that was basically unfair. It was one
of those rare instances where Tribe went on so long -- everybody talked about it
later -- that I should have been entitled to a little extra time. That was a very tough
case. I argued the Teleprompter case here. One wonderful case I had did not get
to the Court of Appeals. We got the first restraining order against the SEC
when we were representing Nelson Bunker Hunt, and it was in the middle of his Silver difficulties. That matter was settled after we got that restraining order, which the agency had not really heard of before.

Another case that was in the District Court rather than in the Court of Appeals was one involving John Lennon. I was representing Capitol Records on an on-going basis. John Lennon very late one night had gone into the Club Cavalaro in New York City and had sat down at a table. There were about six people at the table, and one of them was a Morris Levy. Levy was somebody who ran one of these record companies that put albums out on television; they are not distributed in the general market. You buy them only through television. And John Lennon sat down and began talking about a record he was then making of his oldies favorites, songs that he’d grown up on and was now redoing in his own style. But he was not terribly happy about how it was going, he was down. So Morris Levy said, “I’ve got the answer for you. Let me put this album out on television. It will make the same amount of money, if not more, and you won’t get pilloried by the press the way you would if you put it out through the regular commercial market, because they don’t review the stuff that comes out on television.” Now everybody present agreed up until that point that that is what happened. But then one group said that Lennon replied, “No, no, I’m under exclusive contract to Capitol Records and I can’t do that. I don’t mind sending you a dummy tape just so you can hear what I’m talking about, but there’s no way I can let you put it on TV.” The other
people at the table swore that he said, “That’s a great idea. I’ll send you the tape and you go ahead and put it out.” Well, Lennon in fact sent a rough dummy of the uncompleted tape to Levy, and the next thing he knew an album was on television, being sold. As soon as Capitol Records heard of this, it sent telegrams to all of the TV stations around the country, threatening suit if they didn’t stop immediately, and Levy thereupon sued Capitol Records for interference with his rights. The trial centered around what had been said -- whether there was an oral contract. And as I say, half the people at the table swore one thing, and the other half swore the opposite. Although I did not represent John Lennon, I was on the same side as he was, representing Capitol Records, so his attorney and I went to his home, the Dakota, the large building that he was later shot outside of.

Mr. Kapp: Oh in New York, yeah.

Mr. Prettyman: Yeah, in New York. We went there on several occasions to prepare him for his testimony. And I must say, I didn’t like John Lennon at first. I thought he had a very casual attitude toward the lawsuit and a casual attitude toward everything, I guess. But the more we went on, the better I liked him. By the time he got to trial, he was nicely dressed, and he had a pitcher of what appeared to be orange juice with him every day, which he put down under his seat. He and Yoko Ono came together and attended every day of trial, and we really became pretty good friends. One night, for my book collection, I rushed around Greenwich Village and found a book called Lennon Remembers, and I
brought it in the next day and he inscribed it for me. He made a wonderful witness. He was one of these witnesses who, if the answer wasn’t going to hurt him, he would give it straight out -- hard, narrow, clean, articulate. If it was a question he didn’t want to answer, he’d start in and you’d get totally captivated by what he was talking about, and he’d go on and on and on and by the end of it you forgot what the question was. [Laughter] He never even came close to answering it. He was also funny at times, he was street smart, was what John Lennon was. John Lennon was no intellect, but he was street smart as hell, and as I say, I ended up liking him quite a bit.

Mr. Kapp: How did the case come out?

Mr. Prettyman: The trial judge, who almost didn’t know who the Beatles were because he was a great fan of opera and serious music, had several children who were insane about the Beatles, and he told us later that he went up about thirty notches in his kids’ estimation just by the fact that he had had this trial. He ruled that John Lennon had not made an oral contract, that he was perfectly aware of being under exclusive contract to Capitol Records and would never have given away his record rights and did not do it. So he ruled with one half the people at the table. [Laughter]

This concludes the interview held on October 3, 1996
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. The interview took place at the offices of Hogan & Hartson L.L.P. on the 11th day of February, 1997, shortly after noon.

When we concluded last time, we were talking about cases which you had handled in the District of Columbia Circuit and I wondered if you had any further comments about that, that you wished to make?

Mr. Prettyman: Well, in addition to handling these cases that we've discussed and ones like them that involved very interesting personal situations, criminal matters and the like, I, of course, handled a number of cases for business clients. I, for example, argued at least three cases in the D.C. Circuit on behalf of Greyhound Lines. I argued some railroad matters, some public utilities matters, and those were also interesting cases but not as flamboyant, if you will, or as personally intriguing as some of these matters that we've been discussing.

Mr. Kapp: I wonder if you could tell us about memorable cases that you've handled in other circuits, other than the D.C. Circuit, if there are cases you wish to talk about.

Mr. Prettyman: The case I remember best in the Second Circuit was on behalf of a gentleman named Pacelli, Vince Pacelli, who was quite a character. He had allegedly been involved with the mob. It was a complicated case which
brought forth a very long opinion in the Second Circuit. I always enjoyed arguing in that Circuit. One memorable moment was when I was waiting to argue one day, and Roy Cohn was up arguing a matter for a client in front of me. He had only been going a few minutes when the Chief Judge leaned to his left, leaned to his right, and said “Affirmed, next case”. [Laughter] Roy Cohn was down in a matter of moments and his client in the back of the room was distraught, to say the least. But that Circuit, as you know, had the ability and the reputation for deciding some matters from the bench without benefit of opinion or even benefit of a complete argument sometimes.

The most memorable case I remember in the Fourth Circuit -- and in this series of cases I was on the brief and I do not believe, I am not certain about this, that I argued personally -- but the case was so intriguing. There was a fellow named Juri Raus, who worked in the Bureau of Transportation and who got up at a meeting of Estonian émigrés in Baltimore and declared that a so-called freedom fighter named Erik Heine, who was coming over from Estonia, should be watched very carefully and people should not talk to him, because in fact he was a KGB agent. Heine sued for defamation, and we represented the defendant, Mr. Raus. We introduced an affidavit from the Director of Central Intelligence stating that Mr. Raus had made these statements at this meeting at the direction of the CIA -- the inference being that in fact Mr. Heine was a KGB agent. We got into the files in that case, and it was absolutely fascinating to trace the background of Mr. Heine,
and, in fact, we won that case and the Supreme Court denied cert on the theory that Mr. Raus was forbidden in effect from defending himself because he would have been revealing national security secrets.

Mr. Kapp: How did you ever get the CIA to own up to their role?

Mr. Prettyman: They had instructed him to make the statements, and when they found that, innocently enough from his own standpoint, all he had done was follow directions and get himself into trouble, they simply felt that they had to own up to it. And I always thought that that was exactly the right thing to do but a somewhat surprising thing to do on behalf of a government agency. Incidentally, that case was not litigated from the plaintiff’s standpoint the way I would have done it. If I had been the plaintiff, I would have said, “Fine, don’t let the defendant talk, don’t reveal any secrets, we’ll cut off all discovery -- now give me my money. I mean, obviously my client was defamed -- calling him a KGB agent was defamatory per se -- and if you don’t want to let your client talk, well that’s fine, but we’ll now discuss how much my client has been damaged.” But it wasn’t pursued on that basis, which always puzzled me, and I couldn’t quite understand why the other side seemed to give up as soon as the national security defense was raised.

Mr. Kapp: That is surprising.

Mr. Prettyman: I’ve had a number of interesting arguments in the Fifth Circuit. One was the first appellate argument I ever had, which was on behalf
of the Pillsbury Company, and I've already discussed that. The other that sticks in my mind some 23 years later is the Soldier of Fortune case in which there was an alleged gun-for-hire ad placed in the magazine and someone was hired to kill a man's wife. The murder took place, and the murdered woman's family instead of suing the murderer sued Soldier of Fortune, my client, for running the ad. And in that particular case the Fifth Circuit held that the ad was not clear enough as an invitation to a crime to result in liability and therefore held that Soldier of Fortune was not responsible.

A case in the Sixth Circuit was on behalf of a former bank president who was sued for various alleged improprieties, and we got that reversed on a very technical ground -- namely, that the complaint had failed to allege that his bank was a Federal Reserve bank, which was part of what the government had to allege and prove under the statute. I've also argued in the Eighth and Ninth Circuits. In the Ninth Circuit the most memorable case for me was one in which a client, Exide Electronics, a company in North Carolina, was being sued in California by an ex-independent contractor who was claiming huge damages as a result of Exide obtaining an Air Force contract that this independent contractor claimed he had gotten for Exide and that he was due commissions on. The reason it was so memorable was that the company would have been put out of business if the award, which was tremendous, had stood up. I got that reversed on the ground that the trial judge had given an instruction which included most, but not all, of what North
Carolina law required. He had left out what we claimed was a key portion of North Carolina law, and therefore that was a reversal. The case was also unusual in the sense that thereafter when it went back for retrial, I was retained to monitor the retrial on behalf of the company. That is, the case was being tried by trial counsel in California, and I was retained to attend every day and to make decisions on the basis of preserving the record for appeal. The trial judge, a quite elderly gentleman, ruled that no one could testify at the second trial who had not testified at the first trial, and I thought that that was without any question clear error and therefore was determined to retain that point in case a second appeal became necessary.

In the middle of the trial, our trial counsel found an extremely important witness whom they had not known about before, and they very much wanted to apply to the trial judge to waive his ruling as to that one particular witness. I vetoed that and got the client's approval to veto it on the ground that if we made application to the judge and he granted it, the appellate court would say later that we had waived any objections to his prior ruling. That is, since on the only occasion that we wanted him to waive his ruling we made application and he granted it (if indeed he did), we could easily have made application as to all other witnesses we wanted to testify and he might have waived the ruling as to them too, and therefore we could not prove that we'd been harmed by his original ruling. So they did not call that important witness. Fortunately, the second verdict was so
much smaller that the case was quickly settled for a relatively insignificant amount.

Mr. Kapp: To what extent when you’ve been involved in trials, have you in the course of the trial had your eye on what was going to happen when you were before the appellate court?

Mr. Prettyman: I haven’t been a trial attorney that often, but when I have I must confess that like most other trial attorneys I had my eye on the trial [Laughter] and on doing whatever was necessary to try to win that judge and jury over to my side. And I really gave relatively little thought to an appeal, except to make certain that I got every objection in even when the trial judge seemed not to be very receptive to objections. I did do that. I objected wherever it seemed to be required, but other than that I was focused on the trial itself, and therefore as an appellate counsel I had a degree of understanding of why trial counsel do exactly that -- they’re not worried about tomorrow, they’re worried about winning today so that an appeal will not be necessary.

Just to finish the Circuits here. The case I remember best in the Tenth Circuit was the one we have touched on -- the death penalty case following the documentary I did with Truman Capote. I’ve also argued several three-judge District Court cases, including one involving former Governor Marvin Mandel of Maryland, another involving Paramount Pictures, and a third involving Western Pacific Railroad.
Mr. Kapp: You’re probably best known for your role as a Supreme Court advocate. I wonder if you could tell us a bit about the extent of your Supreme Court practice, the number of cases that you’ve argued, the number of cases in which you’ve appeared, if you know all of that.

Mr. Prettyman: Well, I have filed for cert and have filed opcerts in well over a hundred cases. I suppose 150 cases or more in the Supreme Court, I really don’t know exactly how many. And I have also filed amicus briefs in dozens of cases. Again, I’m not sure precisely how many. I have filed briefs on the merits on both sides -- for petitioners or appellants and for respondents or appellees. I have filed applications for a stay. And I have previously mentioned that I have personally argued 19 cases in that Court. It’s hard to pick out the most important cases I’ve argued, but certainly some were more memorable than others, and I’ll just mention a few of those. A case that I lost that was memorable was Branzburg v. Hayes, a case involving whether a reporter who receives confidential information must appear before a Grand Jury investigating a crime and reveal that information. And I remember that argument particularly because I got into a series of questions from Justice Marshall, who did not make clear to me the hypothetical he was suggesting. As a result, the questioning from him went on for some eight pages of the transcript because I could not seem to answer the question to his satisfaction, and I could not because I did not understand it. It finally developed that what he was getting at was a reporter who received confidential information on
day one and then on day two witnessed an unrelated accident, and whether he could be compelled to testify about the accident. Of course, the answer was quite plain that he could -- he was simply a witness, unrelated to his reporting -- and I could have answered that in a single sentence if I had understood what it was that he was getting at. But it was unclear to me, and I think that's one of the most frustrating sequences I've ever experienced in the Supreme Court.

A case I was more successful in in the First Amendment area was *Nebraska Press Association v. Stuart*, which involved a horrible crime in Nebraska in which a man was arrested and charged not only with murdering an entire family but necrophilia and other crimes. And when his confession was going to be read at a preliminary hearing in open court, the trial judge, concerned that he would never get a fair trial, ordered the press, my clients, not to report what occurred in open court. The issue was whether trial courts could issue prior restraints on the press in that manner, and the Supreme Court unanimously held that they could not, absent some extraordinary circumstances which have virtually never been present since that time. I remember that case particularly because I gave the Justices my own hypothetical, which I think is dangerous to do. But to demonstrate the drastic nature of the prior restraint on the press, I gave the example of ministers, priests and rabbis who learned about that confession and who were going to get up in their pulpits on the Saturday or Sunday prior to the trial and reveal to their parishioners exactly what was in that confession in order to make a point about Satan's control.

-178-
and the ways of the devil, and so forth. And I asked whether there was any chance that a court would issue a prior restraint against those preachers, prohibiting them from saying those things in their pulpits, and I said, “Surely there isn’t, and yet the press is protected under the First Amendment just as obviously as religious leaders are.” Well, it engendered an immediate flow of questions, but I thought it worked out extremely well. And it really made the point. Floyd Abrams was kind enough later to cite that as an example of effective advocacy. So in that particular instance at least it went well.

Another case that I was particularly proud of was Allegheny Pittsburgh Coal Co. v. County Commission, which was a case where a local tax assessor in West Virginia was assessing homes for tax purposes at the value at which they had last been sold. That is, two houses which were actually worth by current value the same thing were being treated radically different for tax purposes because one of them hadn’t been sold for thirty years and the other had just recently been sold, obviously at a much higher price. And we claimed that that was a denial of equal protection. The Supreme Court had not ruled in that fashion for at least 30 years, and we got them to grant cert in that case and to reverse, I believe unanimously. It was interesting because thereafter California by constitutional amendment instituted the same system and the Supreme Court upheld that system. I always thought that analytically there was really no difference between a tax assessor doing it on her own -- she was, after all, representing the state -- and a
state doing it pursuant to constitutional referendum. The principle was the same in both cases as to whether a state could do that, and so when the California case came down, I was particularly pleased that we had been able to talk the Court into doing something that was quite out of the ordinary and which they didn't even stand by many years later.

The McNeil case was interesting because that was a case I was appointed to by the Supreme Court. A fellow named McNeil had been sent to Patuxent Institution, up here in Maryland, as a defective delinquent, which was an amorphous phrase indicating that somebody had committed several crimes and therefore might be suffering from some kind of mental defect or disease. When you got into Patuxent, you were sent to Tier 1, given a whole battery of tests, and determined to be a defective delinquent. You were then sent to Tier 2, and if you behaved properly, you could go to Tier 3, and finally to Tier 4, and then out. But of course if you messed up in any way, you would be retained in your particular Tier, and it was possible that you might spend the rest of your life there instead of just serving your original sentence. Recognizing this, Mr. McNeil refused to answer any questions at all, he refused to take the tests, he refused to talk to anybody when he got there with his five-year sentence. And low and behold, one, two, three, four, five years passed and he was into his sixth year, still on Tier 1, when he wrote to the Supreme Court, and the Supreme Court treated the letter as a cert petition and asked me to represent him. And I remember that argument very well, because
some member of the Court asked the representative of the State of Maryland whether its position meant that without any court intervention, the State of Maryland could keep Mr. McNeil at Patuxent indefinitely. The answer was yes, because since he refused to take the tests they could not determine whether or not he was a defective delinquent, and until they could determine that they couldn’t pass him on to the next Tier, and so they could keep him there forever. And the Court ruled quite to the contrary -- that he should be immediately released. He had served his sentence, and the institution could not keep him there without a court order.

I represented the State of Nevada in several interesting cases involving water rights and water decrees, and I particularly remember that I was up against Erwin Griswold in at least one of those cases, and he never seemed quite to get over that case. He thought he should have won it, and he used to grouse to me about it at cocktail parties in [Laughter] years later, years later. Those are some of the cases that I particularly remember.

Oh, there is one other, and I cite this simply because I think the argument went particularly well. This involved the City of Renton in the State of Washington, which is a small city just southeast of Seattle. They had an adult theater there that they were trying to move out of the immediate downtown area and into a less populated place near the edge of town. And the question was whether the city could zone it in that fashion, based on studies in other cities that
adult theaters caused adverse secondary effects. This was one of the few times I was on the side that was not pro-First Amendment but rather on the other side, because I was representing the city. And I remember the case very well because I felt particularly well prepared. I'd gone out to the City of Renton, and I'd viewed the entire area. I knew the square miles, the population, and all the rest of it, and I was able to answer the questions during the argument, including a few that were not in the record. I made clear that they were not in the record, but that I happened to know about them from my own personal knowledge. So that was one of the few times when, after it was over, I felt actually fairly good about my performance and perhaps I had a chance to win, which indeed we did.

Mr. Kapp: As you look back on your many appearances before the Supreme Court, are there any instances that you recall in which you answered a question in a particular way and regretted afterwards that you answered it in that way or where you thought that the way in which you answered a particular question had actually affected the outcome of the case?

Mr. Prettyman: I never made such a concession that I recall or that I was aware of at the time or afterwards. I never made a concession that adversely affected my case and my client. I have seen that done on a number of occasions, but I'm not aware that I ever did that. I have indeed given answers that were not as complete as I would have liked, and it was usually because in the heat and intensity of the argument I did not fully understand the question -- similar to the instance I
mentioned with Justice Marshall. There have been times where either the question itself was obliquely or opaquely asked, or I was simply so nervous that, even though it was a clear question, I did not understand it properly, and I have looked back later and seen that question should have been answered in another way. I like to think that there were not too many instances of that, but mostly early on in my first couple of arguments when I was extremely nervous. I was aware even at the time that I had not fully comprehended several questions and that I was just answering anything I could think of because I really did not know what was being asked. As you get more used to arguing there, it becomes more fun, and you understand better and better what the game is and how you must respond to questions -- which ones you answer briefly and which ones you answer at great length, and so forth. You make fewer and fewer of those kinds of mistakes.

The nerve-wracking part of it is not in connection with your knowledge of the record or the law, because you presumably prepared yourself to the hilt for that, but rather in relation to hypothetical questions. It is virtually impossible, no matter how well prepared you are, to foresee every question or even every type of question that's going to be asked, and the best you can do is to have enough moot courts and to think so thoroughly about your case and your theory of the case that you are able to foresee the types of questions you are going to get, if not the exact ones. But it's scary that you might be asked a hypothetical that will stun you into silence. That is frightening. And for me, at least, that's always the frightening
part, not being able to foresee every kind of hypothetical that might be thrown at you.

Mr. Kapp: Any instance in which you were asked about a prior
decision of the Court with which you were not familiar?

Mr. Prettyman: I think that has happened, perhaps twice, and I don’t
remember the precise cases, but I do vaguely remember a Justice saying, well how
about the Green case, and I was not familiar with it. But it doesn’t happen very often
simply because one of the things you can prepare yourself for is to understand every
case that could be even remotely involved. It is sometimes quite difficult in cases
coming from state court, where state law might be indirectly or inferentially involved.
You’ve got to make sure that you understand state law. I remember in that argument
that I was telling you about in the Ninth Circuit where the company’s fate was at
stake, a North Carolina state court decision came down only a matter of hours before
the argument, and we were able to get hold of that. I was still reading it as I was
waiting to get to my feet and handed out copies both to the court and to the opposing
side, and indeed that decision was of great importance to the decision in the case. I
think we would have won it anyway, but that decision made state law particularly
clear on the point at issue and was extremely helpful.

Mr. Kapp: Living here in Washington you have a certain amount of
personal contact with members of both the D.C. Circuit and with Justices of the
Supreme Court and I know that you’ve had those kinds of contacts over many,
many years. Does the insight gained through personal interactions of that sort affect
the way in which you present cases before either of those Courts?

Mr. Prettyman: Oh, absolutely, absolutely. I don’t think there’s any
question about it. I’ve argued before twenty Justices. I’ve known them all in one
fashion or another, some obviously better than others. I think it’s important that they
know you. And that you have a reputation with them of being fair and honest, so that if
they ask you something and you tell them what the answer is, they know they don’t
have to go and look it up. They can rely upon your honesty and good will. And turning
that around, what you know about them is their style of asking questions. How serious
they are about those questions. You obviously have to answer every question, but you
don’t have to answer every question with the same degree of depth and seriousness,
because questions are often asked when Justices are bored, or tired, or want to have fun
with you, or want to make a joke, or whatever. And so you have to be able to answer
then and there and do so with deference, but to get rid of certain questions very
quickly in a sentence or two, whereas with others you must tarry over them and pay a
lot of attention. So I think it’s extremely helpful in knowing the Justices, to under­
stand the tenor and nature and seriousness of their questions. Also, I think, to see the
bent of mind. A certain amount of that you can get from the opinions, of course. You
know how a Justice Douglas is going to feel as he starts reading a labor case, for
example. You know what Justice Scalia’s attitude is going to be as he begins to
study a standing case. But when you know these people personally, you just have a much better feel for what their problems are going to be with your case. It's not that you fashion your whole argument around that, but rather you get a feeling for how you should approach an answer. What do you do, for example, with a Justice who is very antagonistic toward your position, not to you personally but toward your position, and who will not stop asking questions, so that you have no ability to address concerns that the other eight Justices might have. You don't know whether that single Justice is in a minority or whether he or she represents five votes. How you deal with problems like that depends to some extent on what you know about them as individuals.

Mr. Kapp: To what extent do you think Justices on the Supreme Court, if you can generalize, are influenced by their own personal life experiences, as contrasted with the way in which they intellectually read cases and read the law?

Mr. Prettyman: It's almost impossible to say, and I don't think they themselves could tell you. Certainly it is a combination. Some would like to think that they approach the law from an intellectual standpoint -- that all they care about is how they read the original Constitution and the framers' intent, or how they read the language of a statute and its common meaning. And yet even those Justices would concede, I think, that this basic approach was in turn formed by life experiences. Moreover, we've had Justices time and again who either quickly or
over an extended period of time became something very different from what they were when they first came on the Court. Earl Warren is a good example. He was quite conservative in his early votes and obviously became quite liberal later. Justice Blackmun took a lot longer period of time, but certainly changed over the years, although I think he would deny that he changed as much as people think. I personally believe that if you go back and look at his earlier opinions, there's no question but that he did change. Justice Souter is evolving before our very eyes. Now it is true that some Justices change very little. I think Chief Justice Rehnquist is an example of somebody who holds basically the same views today that he did when he first came to the Court. With some changes, of course. But he has not changed dramatically. Both Justice Scalia and Justice Thomas give signs that in twenty years they will still be espousing the causes they believe in today. But there have been changes in a number of Justices over the years -- because of the experience of getting on the Court and slowly realizing that you are answerable to absolutely no one except yourself. The freedom that brings, the independence that brings – the ability, for example, of an Earl Warren, who had been in politics all his life, suddenly not to have to be answering to a voter ever again, but instead only to his own conscience -- is something that I think is quite dramatic for some Justices. And therefore a combination of detached intellect and life experience probably results in a decision in each case.
Mr. Kapp: Can you tell us a bit about what your attitude is with respect to the professional responsibility of lawyers to accept *pro bono* representation?

Mr. Prettyman: I've had mixed feelings about the mandatory aspects of it -- for example, a Bar association or a court imposing the duty to spend so many hours or a percentage of your time doing *pro bono* work. I would like to see it in the sense that it would result in a lot more *pro bono* work being done, but on the other hand that would be particularly onerous for small practitioners and small firm personnel who may be having trouble making a living as it is, and would have a particularly difficult time if they had to spend a certain percentage of their time on *pro bono*. But putting the mandatory aspect to one side, I personally think it's just part of your public and professional responsibility as a lawyer to spend a certain amount of time doing good works. Whether that is *pro bono* work representing people who otherwise could not afford it, or whether it's other good work -- in the housing field, for example, or for the hearing impaired, or for whatever it is. I just think that, in the same way that we have a duty to vote, we all as citizens have a duty to spend a certain amount of our time doing good work. It can be public good work or it can be very private and personal good work. Some of us have made efforts that are not really of a public nature but that benefit individuals and that are quite important. But I at least have tried to do a certain amount of *pro bono* work with the firm, and I've always strongly supported the Community Services
Department and all the good work it does. I’m very proud of the fact that this firm, not too many years after I came with it, decided to make a serious effort in this field. As you know, it got John Ferren here to begin the department. Thereafter, the firm has seriously supported the pro bono effort, both in terms of time and money.

Mr. Kapp: If you had to identify those instances of pro bono representation, or what you’ve described as good works, in which you take the greatest personal pride, what would you identify?

Mr. Prettyman: Well, in terms of being a lawyer, certainly the gentleman in Florida whom we’ve kept alive for ten years now on death row. We’re not through with that yet. I think that’s quite remarkable, and I do take pride in it. As I have mentioned, I have gotten to know him and his family quite well, and the more you become involved, even though the crimes were allegedly horrendous, the more you see the other side, the human side of the people involved and how these things can happen. You realize that it’s not just what you read in the paper, but it’s a very human equation working itself out. And I’m quite proud to be involved in that. I have also helped a number of youngsters, both financially and with the kind of quasi-legal help that I’m just so pleased about. There was a young woman recently who had always dreamed of becoming a policewoman. They allowed her to go to the police academy, but after she was there for years they wouldn’t allow her to become a policewoman because they claimed that she was just under five feet tall. Well, we discovered several other policemen on the force who were just under five feet.
tall and wrote a threatening letter, and she is now a policewoman, which is what she had wanted all her life. And you know, there are a number of things like that you can do with just a letter or a phone call sometimes. A young woman just recently after going through high school was not going to receive her diploma or her records, because the school authorities claimed that by living with her grandmother she had avoided the out-of-state payment of school dues. We were able to work it out so that she could get her records and go on to college. Things like that can really make a difference in individual lives. It’s not as dramatic as the class actions that the law firm sometimes files that have a dramatic impact throughout the country. But in terms of personal impact, it is sometimes very effective, very important.

Mr. Kapp: I know that you’ve provided or help provide scholarships for some youngsters and you modestly aren’t talking about that now. But I wonder if you would give me some reaction to how you felt about that. How that all came about.

Mr. Prettyman: It came about as a result of the Street Law program, in which the firm brings in inner-city high school students who visit the firm and who engage in moot courts and go to court. I believe very strongly in that program. I was on the board of the early Street Law endeavor, and I’m working with them right now as a matter of fact, trying to bring high school students here this summer.
from around the country to engage in a Street Law program. But in the course of
these students coming in many, many years ago [Laughter], I was particularly taken
with one young man who stayed behind after the others left and confronted me and
wanted to know what I really did, how much I was making, what car I was driving,
and a lot of things like that. He was a very interesting, intelligent young man, and so I
followed his career and discovered that he had no money at all and really no chance of
going on to college. So I set up a fund, and indeed he went on to college, went to law
school, and has just recently become a lawyer. And so I began that system from year
to year, not every year but picking up kids here and there who would come through,
and it’s been quite successful.

Mr. Kapp: And rewarding I’m sure --

Mr. Prettyman: Very.

Mr. Kapp: You have participated as counsel to, or as a consultant to,
various Congressional Committees or Congressional inquiries from time to time. I
know that you served as a consultant to the Senate Refugee Subcommittee in the late-
60’s. I wonder if you could tell me how you came to be selected for that role.

Mr. Prettyman: This was during the Vietnam War. Senator Edward
Kennedy was on that Committee, and he felt very strongly that the Committee was not
getting the true picture of what was going on in Vietnam in regard to hospitals,
refugees, and things of that kind, so he decided to get his own group together: one
gentleman who spoke Vietnamese, John Nolan, with whom I’d been to Cuba, and
one or two other people. And he talked to us many evenings about this, gave us instructions, and then we flew to Vietnam. We were each assigned to a different Corps, but as a result of others having to come home early, I was the only one who got to all four Corps and really ended up doing the whole country. It was fascinating. I ultimately got my own interpreter, because I did not trust the first couple of interpreters I had. It was quite dangerous, we got shot at a number of times, but we were able to gather a huge amount of information about what was really going on. When Ted Kennedy came over, I spent 11 days with him traveling around, and we were able to fill him in about everything that was taking place. As a result, he was very well-informed, worked hard, and made a good showing. I may say that I went over with an open mind about Vietnam, and I came back extremely cynical about the whole endeavor. I simply felt that the generals and the diplomats were not giving a fair picture of what was going on and that the whole thing was a disaster. I felt very strongly when I got back and have felt the same way ever since. That it was really just a disastrous endeavor, the whole thing.

Mr. Kapp: Were there hearings of some sort?

Mr. Prettyman: There were, but not that I participated in. I was never called as a witness or anything of that kind. I turned in a report to Ted.

Mr. Kapp: And what, somewhat more specifically, were the findings that you made?
Mr. Prettyman: In the hospitals, for example, there were horrible conditions and young children particularly were terribly damaged and were not getting the care that they were supposed to be getting and that the public over here was assured that they were getting. In terms of refugees, the idea that we were building these refugee camps that people were happy in, that everything was on schedule, and that everything was being done for them that could be done was simply false. The place was a shambles, and people who were supposed to have roofs on their huts didn’t have them, and people who were supposed to be at one place were at other places. Some people were starving to death and it was just a mess. So the overall point was that the American people were not being given the facts. They were being lied to about what was going on. In some instances, the generals themselves didn’t know, but in other instances they knew but were feeling tremendous pressure to report back not only certain facts, but that things were getting better -- you know, that we were killing more and more of the enemy, we were replacing more and more refugees, and so on. When in fact it was just nothing short of a lie.

Mr. Kapp: Then, maybe 10 years later you were selected as an outside counsel to the House Oversight Subcommittee in respect of United States v. AT&T.

Mr. Prettyman: Yeah. That was a matter involving whether the telephone company was sufficiently protecting the national interests when it placed wire taps and other devices to intercept messages, and essentially we found that the whole thing was being rather loosely handled. There were too many ways that
supposedly private and confidential information could be released both to our enemies and to people who had no right to the information. And so steps were taken that more adequately protected the national security.

Mr. Kapp: How did you come to be selected for that role?

Mr. Prettyman: I'm sorry, I have no recollection. [Laughter] It's like a lot of cases that you get, you never find out exactly how your name got on the list. I really have no idea.

Mr. Kapp: And who were the House members with whom you had contact in that?

Mr. Prettyman: I'm sorry, I'm drawing a blank. I just don't recall.

Mr. Kapp: Then I know that several years later you were selected as Special Counsel to another House Subcommittee in connection with the events that led to ABSCAM. Can you tell us about that?

Mr. Prettyman: Again, I'm not sure how I was selected. But ABSCAM involved the most extraordinary series of events, as I guess you recall. FBI agents posing as foreign sheiks were meeting Congressmen in a house on W Street in Northwest Washington and offering them $50,000 bribes to support legislation that would allow the sheiks to stay in this country. A number of Congressmen accepted the bribes, and they were charged with crimes and went to trial. I was representing the House Ethics Committee, which had the problem of what to do with these
Congressmen after they were convicted. They were still in Congress. The argument was made that since their cases were ongoing, their appeals were pending, and therefore they had not finally been adjudicated criminals, the House could and should do nothing about them. But the prospect of allowing people to continue to vote on legislation who had accepted $50,000 bribes was simply too much for the House to absorb. And so I was instrumental in getting an interpretation of the Committee’s Rules which allowed the Committee to bring sanctions against those who had been convicted of a crime. We interpreted “convicted” to mean “convicted by a jury” as opposed to “convicted” in the sense that all appeals were exhausted and the cases were finally over. So as soon as a jury convicted, we held hearings, and I introduced evidence from the criminal trials, and on the basis of that evidence the Committee made findings and then voted various censures.

There was one particular Congressman from Pennsylvania who happened to come up first, and the Committee voted to recommend that he be expelled from Congress, which would have been the first expulsion in over 100 years. There were some dissenting votes on the Committee on the theory that he shouldn’t be expelled until his appeals were exhausted, but the majority voted for expulsion, referred it to the House, and I was in the well of the House on the day that, as I say, for the first time in over 100 years the House voted to expel. I had one interesting experience there. At the request of the Chairman, I wrote the
majority report favoring expulsion. But the head of the minority came to me and asked me if I wouldn’t write a dissent to my own report on behalf of the dissenters, and I did. And when the vote was over in the Congress, I ran into one of the dissenters in the men’s room and told him that for a while I didn’t know whether my majority report or my dissent was going to prevail. But that’s the first time I’d ever had the experience of writing a dissent to my own work. The other Congressmen as to whom we held hearings, instead of being formally expelled, resigned. A number of them did, so we did not have to have an expulsion vote. In the end, there was finally one Congressman as to whom I felt hearings should have been held, the Committee disagreed, and I resigned my position.

This concludes the interview held on February 11, 1997.
Mr. Kapp: This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit Court. The interviewee is E. Barrett Prettyman, Jr. The interviewer is Robert H. Kapp. This interview session took place at the offices of Hogan & Hartson L.L.P. on the 14th day of May, 1997, shortly after noon.

Mr. Kapp: We’ve talked a good bit about your professional career, Barrett. We haven’t talked that much about your outside professional activities and I know they’ve been numerous and significant. What do you regard as your most important outside professional activity?

Mr. Prettyman: It’s hard to know how to answer that, because what might be most interesting for me is not necessarily what somebody else would judge to be the most important, and I don’t quite know what kind of standards to apply to that. But certainly one activity that has taken a lot of my time and that absolutely fascinates me is my service on the Board of the PEN/Faulkner Foundation and my three-year stint as President of that organization. PEN/Faulkner brings both big-name and fledgling writers to Washington to read before audiences at the Folger. It also holds a gala once a year at which about 15 or 16 writers each speaks for about three minutes on a pre-chosen topic. It also sends writers into the inner-city schools to talk to students about books that the students have studied. One interesting aspect of this from my standpoint is that for quite a number of years I have taken the gala speakers to the Supreme Court and gotten two Supreme Court Justices to
talk to them during the afternoon preceding the gala dinner. The Justices have ranged across the Court in terms of their judicial philosophy. Almost all of them have been interested in writers, even though many of the Justices do not have time to read fiction as much as they would like. And of course the writers have been consistently enthralled by the Justices, who lead such a different way of life from their own. So that experience with PEN/Faulkner has been wonderful, because I like and admire writers. I love to read, although I am a slow reader. I think that a beautifully written book is a miracle, and I have the utmost deference for people who are engaged in that very solitary work and who produce particularly works that live on. So I’ve enjoyed my relationship with writers. I’ve gotten to know a good number of them. Some of them really quite well, and a few quite diverse from each other -- such as Gore Vidal and Norman Mailer -- and really any number of writers across the spectrum who have come here from time to time and with whom I’ve had the pleasure of associating.

Mr. Kapp: Can you tell us something about your own reading interests? Does it run to fiction or nonfiction? Who are your favorite authors?

Mr. Prettyman: It runs really everywhere. I enjoy a good airport read, like a mystery novel that you might pick up on the stands, all the way through to certain books that I reread quite often, such as Pete Dexter’s Paris Trout and Coleman McCarthy’s All The Pretty Horses. I like to go back occasionally and reread a Faulkner, or something like Hemingway’s Movable Feast, or a Fitzgerald.
I try to reread *The Great Gatsby* every few years. I read some biography. Right now I'm reading *Crazy Rhythm* by Len Garment. I read some historical books, not so much historical novels as historical nonfiction. I have read a number of books, for example, about Churchill, or about Hitler. So my tastes are really quite eclectic. I think the thing that is most important to me is whether the book is well written, not necessarily how prominent the author is. For example, I just got through reading *Father and Son* by Larry Brown, who is not a terribly well-known writer but who is a marvel. He's wonderful. And so as I say, what I can't stand and what I can't finish are those books that are just badly written, including from some rather well-known authors.

Mr. Kapp: You've had some involvement with literary figures as clients, I know. Can you tell us anything about any of those relationships?

Mr. Prettyman: Well, I believe I have mentioned that I represented Katherine Anne Porter for about the last 20 years of her life, and that came about in quite an odd way. I had finished her *Ship of Fools* one night. I guess it was about 10 o'clock. I had heard that she was living in Washington. I looked her up in the telephone book and found a K.A. Porter living in Georgetown, so I called her, most apologetically, and said that I hated to bother her but that I had just finished her book and had loved it, and I told her about certain things in it that had moved me very much. We got to talking, and it turned out at the end of a very long conversation that she was quite depressed, alarmingly so. And so I made

-199-
arrangements to go by to see her the next day. That developed into a friendship which in turn, after several years, turned into my being her attorney, and that lasted until very near the end of her life, when we had to have a court adjudge that she was no longer able to take care of herself, we had her nephew appointed to take care of her. That was a wonderful relationship, we were quite close. Because if there was ever anyone who really needed an attorney and a friend, it was Katherine Anne, who did not make any money at all until *Ship of Fools* and who once she did make it enjoyed spending it. She was someone whom you had to look out for, because otherwise she would be taken advantage of. It was through her that I met a number of fascinating people, like Eudora Welty, Robert Penn Warren, and others.

I have given and am still giving her letters to the University of Maryland, which has a Katherine Anne Porter Room. Going through some old notes the other night, I saw one about a dinner she took me to in New York, and I don’t remember all the people who were there -- even though there were only ten or twelve -- but there were Saroyan, Jean Stafford, John Cheever, and I think Red Warren. I’m sorry I can’t remember the others, but it was a sterling group of writers. I have mentioned that I also met Truman Capote through her. In addition, I represented J.P. Donleavy, the author of *The Ginger Man*, who was having serious problems with copyright protection. So yes, over the years I have represented some writers, but never doing it full-time.
Mr. Kapp: You also, I know, have an extensive collection of letters. I guess mostly of literary figures. Could you tell us about the origins of that and give us some sense of the collection?

Mr. Prettyman: Well I have two collections. One is of letters and documents that are on display at Hogan & Hartson. That really is an offshoot of my primary interest, which has been over a thousand signed and inscribed books. I've been collecting those for I guess about thirty years now, and two things happened. First, I finally ran out of room. I simply don't have any more space in my apartment. And secondly, the market has gone up so much since I began that I really can't afford to be collecting these books any longer. I feel sorry for people who are starting out collecting these books today, as a young friend of mine is, because the market has really risen in an amazing way. In any event, I am right this moment in the process of packing up those books because I am creating a collection at St. John's College in Annapolis, where my grandfather went to school for a few years, and it is going to preserve them as a collection and display them, pretty much as they have been displayed here at the firm. That is, I put one or two books up every week in a special display case in the Library here at Hogan & Hartson, and I change that once a week. St. John's is going to do the same thing, so that some of the books will be on display at all times. I like that because Annapolis is nearby, so I can run over if I get too morose about those empty shelves in my apartment. I also like the idea that young people, particularly, can get the feel of these books and
be able to see and touch books that famous writers signed and inscribed over the years. With the rise in the market, the collection is really quite valuable now and so they have to be treated carefully. You must have the right room temperature and not too much light which St. John's, with its new library, is now able to provide.

Mr. Kapp: What was the source of your acquisitions? Did you simply buy most of these on the open market or . . . ?

Mr. Prettyman: Dealers around the country know me. [Laughter] And so I get all kinds of catalogs and brochures. They call me when they have items that they think I'd be particularly interested in. I go to auctions and displays, fairs, and in addition to that I have often bought a first edition of a book of a young writer who has just been very well reviewed, but this is his or her first book, and I will send it off to them for signing. So I have a fairly large collection of writers whom you may not have heard of but who some day may be the Faulkners or Steinbecks of their generation.

Mr. Kapp: Certainly one of your most well-known outside professional activities was your term as the first elected President of the D.C. Bar. Have you got any recollections about that term that you'd like to share, any sense of what the high points were for you?

Mr. Prettyman: Well, I have a recollection of a lot of confusion, because we had no members at all one day and very shortly thereafter we had over 15,000 members. You had to belong if you were going to practice in D.C. So we
immediately had a very large clientele, if you will. Of course, that looks like a
minuscule group compared to the 66,000 members today, but it was certainly large
at the time. It seemed so. I had a very diverse and eclectic board. I remember that
the meetings were somewhat chaotic, because we were so new to this and we didn’t
know exactly what our duties and responsibilities were. We were certainly not
certain as to what restrictions there might be on us. And as a matter of fact, we
assumed that there weren’t many and proceeded to do pretty well what we wanted
to. We worked very hard to get an executive director and to obtain quarters. I
appointed, out of the blue, a citizens’ advisory group, because I thought that there
should be liaison between the Bar and citizens, laymen. And I’m proud to say that
that group is still in operation today, and I understand very active. I attended a
number of ABA meetings dealing with involuntary bars, and began slowly to get a
perception that we could not simply do anything we pleased. But there was one case
that came along where we thought that the Bar should express its view of what
justice called for in the case -- I believe it was a criminal case -- so I just wrote a
brief and we filed it. That could not be done today. Considering how little we
knew, I think we did quite well. We really got the thing moving and running. We
established relationships with the judges, which was important. We got the ethics
aspect of the Bar going, and while it was a somewhat chaotic year, I felt that by the
end of it we had really taken some long strides toward making it a very viable
organization, which I certainly think it has become.

-203-
INDEX

Aachen, Germany, 23
ABA (American Bar Association), 203
ABA Appellate Practice Institute, 130
ABC (American Broadcasting Association), 119, 121
AT&T case (see U.S. v. AT&T), 193-194
Abrams, Floyd, 179, 220
ABSCAM, 194-196
Administrative Conference, 61, 77
Alfalfa Club, 93, 223
Allegheny Pittsburgh Coal Co. v. County Comm. of Webster, 488 U.S. 336 (1989), 179-180
All the Pretty Horses by Coleman McCarthy, 198
American Academy of Appellate Lawyers, 129
American Bar Association (ABA), 203
American College of Trial Lawyers, 130
American Judicature Society, 129
American University, 80, 130
Amicus briefs, role of, 166-167
Anecdotes:
   About: body-surfing, 223
   Castro, meeting with, 138-139
   childhood Christmases, 62-63
   college, 35-36
   Dunbar pool funding, 144-145
   gambling, investigating as a reporter, 38-40
   Hemingway's house in Cuba, 138-39
   hitchhiking, 16-18, 30
   J. Edgar Hoover, 154-155
   Senator John Warner, 71-72
   Justice Frankfurter, 46-47, 98-99
   Justice Jackson, 46, 95-97
   Princeton/Yale football game, 35-36
   Robert F. Kennedy, 147-148, 148-149
      courage of, 148-149
      presidential campaign, 147-148
   Ronald Reagan, interview with, 120-121
   Senator Joseph McCarthy, 48-49
   Warren Beatty and Robert F. Kennedy presidential campaign, 211-214
   World War II, 23-25
writing *Death and the Supreme Court*, 115-118

Annapolis, Maryland, 201

Appellate advocacy:

- Amicus briefs, role of, 166-167
- Arguments in circuit courts and the Supreme Court, 164-165
- Before the Supreme Court, 182-183
- Briefs, effective writing of, 162, 163
- Elements of, 157-158, 160-161
- Judges, personal relations with, 184-185, 206
- Noted lawyers, 204-205
- Oral argument, 161, 163-164
- Preparation for, 158-159, 183-184

*Armone* case (see *U.S. v. Armone*), 171

*Association of American Railroads v. U.S.*, 603 F.2d 953 (D.C. Cir. 1979), 171

Avery, Sewell, 54
Awalt, Floyd, 60
Baltimore, Maryland, 1, 2, 3, 5, 79, 140, 172
Battle of the Bulge, 24
Bausch, Richard, 223
Bay of Pigs prisoner exchange, 134-140
- Goods for the exchange, 136-137
- Meeting with Castro, 138-139
- Negotiations for, 135
Bazelon, Judge David L., 68, 69
the Beatles, 170
Beatty, Warren, 211-213
Bechet, Sidney, 33
*Before Their Time* by Robert Kotlowitz, 221
Belgium, 25
*Bertel v. Panama Transport Co.*, 202 F.2d 247 (2nd Cir. 1953) (*Boat fire case*), 95-97
Bill of Rights, 209
Birney, Arthur, 214
Birney, Jim, 10-11
Black, Justice, 69, 82, 99, 105-106
Black Muslim, 133
Blackmun, Justice, 187
Blackstone Hotel, 151
Blow, George, 51
*Boat fire case* (see *Bertel v. Panama Transport Co.*), 95-97
Boston Globe, 155
Brandeis, Justice, 69, 107
*Branzburg v. Hayes*, 408 U.S. 665 (1972), 177-178
Brennan, Justice, 56, 210-211
Breyer, Justice, 56
Britain, 27, 80
Brown, Edmund, 116, 117
Brown, Larry, 199
Brown University, 36

  Chief Justice Warren's first draft opinion, 84 - 85
  Impact of case, 89-91
  Justice Jackson's unpublished opinion, 83-87, 89, 90
  Law clerks research committee, 87
  Opinion delivered, 85-86

Bramus (dog), 144
Bunche, Ralph, 46
Burger, Warren,
  During tenure on U.S. Court of Appeals, 68, 69, 131-132, 157
Burton, Justice, 65

*Business Week*, 147
California, 16, 80, 118, 174, 179
Camp Butner, North Carolina, 26
Canada, 17
Capitol Records, 148, 168, 169
Capitol Records/John Lennon lawsuit, 168-170
Capote, Truman, 119, 120, 122, 132, 156, 176, 200
Carter, President Jimmy, 222
Casey, Frank, 111
Castro, Fidel, 135-138, 149-150
CBS (Columbia Broadcasting System), 214-215
Chalk, O. Roy, 142
Chamber of Commerce, 166
Chaplain of the Senate (paternal grandfather), 3, 54
Cheever, John, 200
Chevy Chase, Maryland, 6, 10, 14
Chicago, Illinois, 151
China, 29
Churchill, Winston, 89, 199
CIA (Central Intelligence Agency), 64, 78, 172-173, 217
*City of Renton* case (see *City of Renton v. Playtime Theatres, Inc.*), 181-182
Civitan Club, 61, 76
Clark, Justice, 116
Clifford, Clark, 155
Clifford Irving lawsuit, 155
Clinton, President William J., 78
Club Cavalaro, 168
Cohen, Lester, 112, 132
Cohn, Roy, 172
Collins, Jerry, 112
Colorado, 123
Columbia, Maryland, 79-80
Committee on the Bicentennial History of the District of Columbia Circuit, 129
Committee on Veterans’ Hospitals, 77
Connecticut, 17
Connecticut Avenue, 61
Connolly, Paul, 112, 113, 132
Connors, Chuck, 145
Corcoran, Tommy "the Cork", 57
Corporation Counsel of the District of Columbia, 60, 76
Crazy Rhythm by Len Garment, 199
Cuba, 134-137, 191
Dakota, the, 169
Danaher, Judge John A., 68
Davenport College, 32
Davis, John W., 84, 223
Death and the Supreme Court by E. Barrett Prettyman, Jr., 114-118
Death penalty:

Book on, 114-118
Cases, 122-123
Garrison v. Patterson, 391 U.S. 464 (1968), 122-123, 176
TV documentary on, 119-122, 156

Denver, 17
Department of Justice, U.S., 99, 146
Antitrust Division, 140
Segregation in, 146
Depression (the Great), 12, 13
Determan, Sally, 123
Dexter, Pete, 198
Dillard, Hardy, 44
District of Columbia, 3, 80, 142, 146, 197, 199
District of Columbia Area Council on Alcoholism, 77
District of Columbia Bar, 61, 76, 130, 202-203
D.C. Bar Foundation, 130
D.C. Bar Judicial Evaluation Committee, 130
President of, 202-203
District of Columbia, Corporation Counsel of the, 60, 76

District of Columbia Superior Court:

Donleavy, J.P., 200, 223
Donovan, Jim, 135
Dorsey brothers, 33
Douglas, Elsie, 106
Douglas, Justice, 46, 48, 67, 69, 82, 92, 93, 105, 185
Doumar, Judge Bob, 51
Dunbar School, 144
Dunn, Dan, 13
Durham v. U.S., 214 F.2d 862 (D.C. Cir. 1954), 68
Edgar Award, 115
Edgerton, Judge Henry W., 131
Eighth Circuit, 174
Eimann v. Soldier of Fortune Magazine, 880 F.2d 830 (5th Cir. 1989), 174
Einstein, Albert, 98
Ella Mae Work case (see Work v. U.S.), 130-131
Elman, Ziggy, 33
England, 21
Ennis, Bruce, 204
Ernie Fitzgerald case (see Nixon v. Fitzgerald), 217-218
Estonia, 172
Evanston, Illinois, 7
Evening Star, The, 111
Executive Office Building, 141, 150
Exide Electronics case (see Hendry v. Exide Electronics Corp.), 174-176, 184
FAA (Federal Aviation Association), 14
Fahy, Judge Charles, 68, 131
Father and Son, 199
Faulkner, William, 33, 198
Federal Bureau of Investigation (FBI), 154, 194
Federal Trade Commission, 109, 123
Feldman, Mike, 149
Ferren, Judge John, 189
Ferris & Company, 6
Ferris, George, 6, 19
First Amendment, 178, 182
Fitzgerald case (see Nixon v. Fitzgerald), 217-218
Fitzgerald, F. Scott, 198
Florida, 123, 135-136, 189, 224
Folger Theater, 197
Ford model "T" automobile, 3
Forrest, Mrs. (ancestor of EBP), 1
Fort Benning, Georgia, 20
Fotomat, 156
Fourteenth Amendment, 86-87
Fourth Amendment, 131
France, 21, 23, 80
Francis Gary Powers/U2 incident, 62, 77, 78
Frankfurter, Justice, 46, 47, 52, 69, 105
As a teacher, 95, 97
Judicial philosophy, 98
Method of working, 91-93
Fuller, Chief Justice, 46
Fulwood, William, 133-134
Fulwood case (see Fulwood v. Clemmer)
Garfield Hospital, 3, 6
Garment, Len, 199, 219
Garrison case (see Garrison v. Patterson), 122-123, 176
Garrison v. Patterson, 391 U.S. 464 (1968), 122-123, 176
Gary Powers, 62, 77, 78
George Mason University, 80
Georgetown, Washington, D.C., 199
Georgetown University Law Center, 59, 60, 76
Georgetown University Law Alumni Club of Washington, 61, 76
G.I. Bill, 31
Gimbell, Pidey, 120
Ginsburg, Justice, 56
Goodman, Benny, 33
Goodrich, Judge George, 6, 10-11
Goodwill Industries Group, 77
Governor Marvin Mandel (see U.S. v. Mandel), 176
Grandfathers of EBP, 1-5, 9, 54, 201
Grant, Cary, 143
Great Depression (see Depression)
Great Lakes, 18
Greece, 80
Greenwich Village, New York, 169
Greyhound Corp. v. I.C.C., 668 F.2d 1354 (D.C. Cir. 1981) (Greyhound Lines cases), 171
Griswold, Professor Erwin, 181
Gurganas, Allan, 223
Haley, Bill, 33
Harcourt, Brace, 114
Harlan, Justice, 92-93, 211
As a teacher, 97
Judicial philosophy, 99
Method of working, 93
Harlow, Jean, 1
Harris, Judge Stanley S., 52, 53, 108
Hartson, Nelson, 112
Harvard Law School, 42
Harvard University, 31, 106
Havana Libra, Cuba, 139
Hayworth, Rita, 155
Hedgesville, West Virginia, 79
Heine, Eerik, 172-173
Heine v. Raus, 399 F.2d 785 (4th Cir. 1968), 172-173
Hendry v. Exide Electronics Corp., 974 F.2d 1342 (9th Cir.1992) (Exide Electronics case), 174-176
Hemingway, Ernest, 33, 138-139, 198
Hewes, Prettyman, and Awalt, 57, 60, 61
Hewes, Tommy, 60
Hill, Dr. Henry, 1, 2
Hill, Lucy (Prettyman), 1, 2, 5
Hitler, Adolph, 27, 199
Hogan & Hartson L.L.P., 1, 30, 52, 61, 71, 76, 81, 108, 113, 123, 126, 133, 152-153, 171, 197, 201
Community Service Department, 127-128, 188, 189
Death penalty cases, 123
Key partners in the 1950s, 112
Major clients, 111
Street Law program, 190-191, 224
Type of practice in the 1950s, 109-112
Holland, 25
Holiday, Billie, 33
Hollywood, California, 80, 120
Hoover, J. Edgar, 154-155
Hopewell, Virginia, 41, 59
House Ethics Committee, 194
House Oversight Subcommittee, 193-194
Howry, Edward, 123
Hughes, Howard, 155
Hughes, Justice, 69
Hughes Tool Co. v. Transworld Airlines, Inc., 410 U.S. 975 (1973) (TWA case), 155
Hunt, Nelson Bunker, 168, 218-219
In Cold Blood by Truman Capote, 119
Interagency Committee on Transport Mergers, 142
Interstate Commerce Commission (ICC), 141
Ireland, 80
Irving, Clifford, 155
Irving Street, 14
Italy, 80
Jackson, Bill, 106
Jackson, Justice, 46, 47, 69, 81, 82-92, 93, 95, 96, 97, 99, 101, 103, 105-106
As a teacher, 95
Boat fire case anecdote (see Bertel v. Panama Transport Co.), 95-97
Brown v. Board of Education, unpublished opinion in, 83-90
Illness and death, 84-86, 91-92
Judicial philosophy, 99
Methods of working, 81-82
At Nuremberg, 106-107
Papers, publication of, 106
Jackson, Robert, 208
Jackson v. U.S., 395 F.2d 615 (D.C. Cir. 1968), 156-157
Japan, 80
Johns Hopkins University, 20
Johnson case (see Johnson v. D.C.), 153-154
Johnson, President Lyndon B., 150-151, 152, 222
Jones, Nubby, 108, 112, 222
Jones v. Wolf, 443 U.S. 595 (1979), 155
Judges:
  Effect of personal life on judicial views, 186-187
  Qualities of a good judge, 208-209
  Role of the judiciary, 209-211
Judicial Conference Committee, U.S., 77
Judicial Fellows Program, 130
Judicial restraint, 98
Juri Raus case (see Heine v. Raus), 172-173
Justice Department, see Department of Justice, U.S.
Kansas, 16
Kapp, Robert H., 1
Katherine Ann Porter Room at University of Maryland, 200
Keesecker, Victoria, 79-80
Kelly, Joe, 37, 44, 132
Kennedy Administration, 133
Kennedy, Edward, 191-192
Kennedy, Ethel, 143, 148
Kennedy family, 53
Kennedy, President John F., 140, 141, 143, 149, 222
Kennedy, Justice, 54, 56, 73
Kennedy, Kathleen, 148
Kennedy, Robert F. (Bobby), 45, 47, 48, 50, 134, 137, 140, 141, 142, 143, 144, 145, 148, 149, 151, 211, 212, 214, 219, 220, 222, 223
Bay of Pigs prisoner exchange, 134, 137
Character of, 146, 147-149, 219
In law school, 45, 47, 48, 50-51
Presidential campaign, 147-149
  Warren Beatty's involvement, 211-213
Projects in the District of Columbia, 142-146
Relationship with EBP, Jr., 45, 50-51, 140-149, 151
See also under Prettyman, E. Barrett, Jr.
Kenwood, Maryland, 7, 10
KGB, 172
Khan, Aga, 155
Khan, Yasmin, 155
Kidnapped, 13
Kluger, Richard, 83-84, 86
Koran, 133
Korean War, 29
Krupa, Gene, 33
Lacovara, Phil, 205
Lancaster, Burt, 223
the Lawyers Club, 129
Lennon, John, 168-170
Lennon Remembers by John Lennon and Jan Wenner, 169
Leonard, Elmore, 223
Les Miserables, 13
Leventhal, Judge Harold, 68
Levy, Morris, 168-169
Lexington, Virginia, 5
Libel Show, 44
Livingston, President of Capitol Records, 148
Lloyds of London, 156
London, England, 21, 25
Loos, Carl, 71
Loos, Dick, 71
Lucas, Dr. (Canon), 11, 12
Mailer, Norman, 198, 223
Mandel case (see U.S. v. Mandel), 176
Mandel, Governor Marvin, 176
Mantle, Mickey, 145
Marciano, Rocky, 145
Marshall, Justice, 84, 157, 177-178, 183, 223
Maryland, 1, 6, 7, 10, 14, 76, 79, 80, 176, 180-181
Massachusetts, 17, 113
Matthews, Judge Burnita Shelton, 133
McCarthy, Coleman, 198
McCarthy, Cormac, 34
McCarthy, Senator Joseph, 46, 48-49
McGowan, Judge Carl, 68
McGuire, Noreen, 16, 80
McGuire, Ollie, 112
McNeil, Edward Lee, 180, 181
McNeil case (see McNeil v. Director, Patuxent Institution), 180-181
Media Law Reporter, 130
Methodist Church, 156
Mikva, Judge Abner J., 167
Miller, Jack, 218
Miller, Judge Wilbur Kingbury, Jr., 68-69, 157
Mintz, Seymour, 111, 112, 132, 155
Mississippi, 133
Model-T, 2
Morgenthau, Hans, Jr., 60
Moscow, Russia, 215
*Movable Feast*, A, by Ernest Hemingway, 198
Muhlenberg College, 215
Musial, Stan, 145
Mystery Writers of America Best Crime Book of the Year, 115
NAACP, 166
National Institute of Arts & Letters, 119
National Wildlife Federation, 156
Nebraska, 178
Nevada, 117, 181
*Nevada case (see U.S. v. Nevada)*, 181
New Haven, Connecticut, 36
New Jersey, 24, 80
Newport, Rhode Island, 37-40
New York, 33, 36, 80, 93, 107, 114, 135, 148, 149, 168, 169, 200, 215, 216, 219, 220
New York, New York, 33, 80, 114, 119, 148, 149, 168
*New York Herald Tribune*, 36
Ninth Army, 84th Division, 22
Ninth Circuit, 14, 174, 184
Nixon Administration, 217
Nixon, President Richard M., 147, 217-219
Nolan, John, 135, 191
Normandy Beach, France, 22
North Carolina, 174
Nuremberg, Germany, 106, 107
O'Connell, Helen, 33
O'Connor, Justice, 54, 56, 73
Oberdorfer, Judge Louis F., 134
Ocean City, Maryland, 8, 14-15, 16, 63, 79
Olin Corporation, 156
Olympic Games, 214-215
Ono, Yoko, 169
Oppalocka, Florida, 135
Oregon, 212
P&F Shoeshine Company, 19
*Pacelli case (see U.S. v. Armone)*, 171
Pacelli, Vincent, 171
Paddock, Courtney Prettyman, 2, 7-8, 12, 15, 21-22, 57, 64, 78, 131
Paddock, George, 7
Palmer, Arnold, 145
Paramount Pictures case, 176
Paris, France, 25
Paris Trout, 198
Patrick, Duke, 112
Patuxent Institution, 180-181
Pawtucket, Rhode Island, 37
PEN/Faulkner Foundation, 34, 197-198
Penn Central Railroad, 141
Pennsylvania, 195, 215
PEPCO, 111
Phi Gamma Delta, 32
Pillsbury Co. v. FTC, 354 F.2d 952 (5th Cir. 1966), 109, 123-124, 173-174
Pillsbury Mills case (see Pillsbury Co. v. FTC), 109, 123-124, 173-174
Pillsbury Company, 174
Plessy v. Ferguson, 163 U.S. 537 (1896), 86
Plimpton, George, 223
Poitier, Sidney, 223
Porter, Katherine Anne, 34, 119, 155, 199, 200
Powers, Gary Francis, 77, 78
President's Commission on Narcotics and Drug Abuse, 62, 77
President's Conference on Administrative Procedure, 62, 77
Presidents of the United States:
  Carter, Jimmy, 222
  Clinton, William J., 78
  Johnson, Lyndon B., 150-151, 152, 222
  Kennedy, John F., 140, 141, 143, 149, 222
  Nixon, Richard M., 147, 217-219
  Reagan, Ronald, 119, 120, 156, 216
  Roosevelt, Franklin Delano, 27, 54, 59, 60
  Truman, Harry F., 29, 54, 55, 57
  Wilson, Woodrow, 3
Prettyman, Judge E. Barrett (EBP):
  Civic activities, 61, 76, 77
  Death of, 10
  Early life, 4, 67
  Education, 59
  Flying, fear of, 14
  Hobbies, 62-64
  Integrity of, 64, 65
  Journalist in Hopewell, Virginia, 41, 59
  Judicial philosophies:
ideology, 54, 56, 72-73
reversal by higher court, 66-68
role and function of courts, 72-73, 102-103
Legal career (prior to judgeship):
  Corporation Counsel for the District of Columbia, 60, 76
  General Counsel of the Bureau of Internal Revenue, 60
  Georgetown Law School, teaching at, 60
  Hearing officer for conscientious objectors, Office of the Attorney General, 61,
  Hewes, Prettyman, and Awalt, 57, 60, 61
Money, attitude toward, 53
Noted judges, 69
Noted lawyers, 70
Performing Arts, interest in, 62-63
Political views, 54
Relationship with his family:
  children, 62-64
  father, 4-5
  EBP, Jr., 73-75
U.S. Court of Appeals for the District of Columbia Circuit:
  Administrative Conference, establishes, 61-62, 77
  appointed to, 57-58
  Chairman, Board of Inquiry into the Francis Gary Powers-U2 investigation, 62, 77-
  Chairman, Committee on Veterans' Hospitals, 62, 77
  Chairman, U.S. Judicial Conference Committee, 77
  Chairman, President's Commission on Narcotics and Drug Abuse, 62, 77
  Chairman, President's Conference on Administrative Procedure, 62, 77
  Chief Judge of the, 58
  colleagues, relationships with, 68-69
  contributions to court, 65, 66
  important cases, 66-68
  law clerk selection, 71-72
  retirement from, 58-59
U.S. Courthouse for the D.C. Circuit, named for, 76-78
Washington, DC, ties to, 76
Prettyman, E. Barrett, III (Ty), 79, 80
Prettyman, E. Barrett, Jr. (EBP, Jr.):
  Achievements, 225
  Authors, favorite, 33-35, 198-199
  Career (prelaw):
    journalism, at The Providence Journal, 37-40
  Career goals, 19-20
    change from journalism to law, 40-43
    journalism, 40, 41, 42
legal career, 52-54
regrets, 220-221
Solicitor General, ambition to be, 220-222
Castro, impressions of, 138-139, 149-150
Civic activities:
  Alfalfa Club, 223
  D.C. Bar, President of, 202-203
  organizations, 129-130
  PEN/Faulkner Foundation, 34, 197-198
  Street Law program for children, 190-191, 224
Consultant to TV program, Separate But Equal, 223
Death penalty:
  author of Death and the Supreme Court, 114-118
  cases, 114-117, 122-123,
  Garrison v. Patterson, 391 U.S. 464 (1968), 122-123, 176
  pro bono work on, 123
  discussion with President Reagan on, 120-121
  documentary for ABC Television on, 119-122, 176
  interest in, 114-123, 176
Early life:
  childhood, 6-7
  family background, 1-6, 10
  family political views, 54
  family relationships with:
    children, 63, 79-80,
    grandchildren, 80
    grandparents, 1-3, 4, 5, 9, 54, 201
    mother, 1, 3, 5, 8, 10, 14, 57, 64, 65
    sister, 2, 7-8, 12, 15, 21-22, 57, 64, 78, 131
  family trips, 14-15, 63
  friendships, 3, 6, 10-11, 19, 51, 52, 55, 92-93, 115, 116, 169, 200, 216, 217, 224
  Great Depression, effect of the, 12-13
  hitchhikes across United States, 8, 9, 15, 16-18, 30, 33
  religion in the family, 3, 4, 9
Education:
  Somerset School, 10-11
  St. Albans, 10-12
  University of Virginia School of Law, 31-32, 40, 42-50
    activities, 44-45, 50
    friendships, 45, 50-52
    on Law Review, 43-44, 49
    Legal Forum speakers, 45-49
    professors, 44
Yale University, 5, 11-12, 30-36
extracurricular activities, 33, 35-36
literary interests, 33-35

Father (EBP):
influence of, 4, 37, 40, 43, 52-53, 62, 63, 64, 66, 73, 74, 75
relationship with, 73-75
retirement of, 58, 59

Favorite authors, 198-199
Favorite books, 13, 33, 198-199

Hobbies:
body surfing, 223
collections, first editions of books and autographs of authors, 201-202

Inventions, 213-214

Kennedy, Robert F., work with:
builds playground in District of Columbia, 142-144
impressions of, 146-147, 219
relationship with, 45, 47-48, 50-51, 140-149
reopens swimming pool in District of Columbia, 144-145
stay-in-school program, 145-146
works on RFK's presidential campaign of, 147-149, 211-213

Legal career:
in federal government:
Supreme Court:
clerkships:
for Justice Frankfurter, 92-94
Frankfurter as a teacher, 95
Frankfurter's method of working, 92-93
for Justice Harlan, 92-94
Harlan as a teacher, 97
Harlan's judicial philosophy, 99
Harlan's method of working, 93
for Justice Jackson, 81-91, 95-97
Boat fire case (see Bertel v. Panama Transport Co.), 5-97
Brown v. Board of Education, 82-91
editing Jackson's opinions, 88-89
Jackson as a teacher, 95
Jackson's judicial philosophy, 99
Jackson's method of working, 81-82
impact of clerkships on career, 103-104
Justice Warren, views of, 100-102
relations among justices, 82, 92, 104-106
role of Supreme Court law clerks, 94-95
in executive branch:
at the Department of Justice, U.S.:
as Special Assistant to the Attorney General, 141
Bay of Pigs prisoner exchange, 134-140
at the White House:
as Special Assistant to the White House, 141
in legislative branch:
as Consultant to the Senate Refugee Subcommittee, 191-193
as Counsel to the House Oversight Committee, 193-194
as Special Counsel to the House Ethics Committee (ABSCAM), 194-

Hogan & Hartson L.L.P. (since 1955 ), 52
antitrust practice, 111
appellate work, interest in, 153, 156-157
authors, as clients, 199-200
clients, 155-156
death penalty cases, 122-123, 176
joining the firm, 108-109
leaving the firm, 133
notable cases, 153-157, 167-182
in circuit courts, 171-177
in the Supreme Court, 177-182
Allegheny Pittsburgh Coal Co. v. County Comm. of Webster,
488 U.S. 336 (1989), 179-180
Branzburg v. Hayes, 408 U.S. 665 (1972), 177-178
Capitol Records/John Lennon case, 168-170
City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), 181-

Clifford Irving case, 155
Eimann v. Soldier of Fortune Magazine, 880 F.2d 830 (5th Cir.
(Soldier of Fortune case), 174
Garrison v. Patterson, 391 U.S. 464 (1968), 122-123, 176
Hendry v. Electronics Corp., 974 F.2d 1342 (9th Cir. 1992)
Electronics case), 174-176, 184

Greyhound Lines cases (Trailways Lines, Inc. v. I.C.C., 766
F.2d 1537 (D.C. Cir. 1985); Pennsylvania Public
Utility
Greyhound
Corporation v. I.C.C., 668 F.2d 1354 (D.C. 1981), 171
Heine v. Raus, 399 F.2d 785 (4th Cir. 1968) (Juri Raus case), 172-

Hughes Tool Co. v. Transworld Airlines, Inc., 410 U.S. 975
(TWA case), 155
Jackson v. U.S., 395 F.2d 615 (D.C. Cir. 1968), 156-157
Jones v. Wolf, 443 U.S. 595 (1979), 155


Paramount Pictures case, 176
Pillsbury Co. v. FTC, 354 F.2d 952 (5th Cir. 1966), 109, 123-124, 174
Teleprompter Cable Systems v. FCC, 543 F.2d 1379 (D.C. Cir. 1976), 167

U.S. v. Armone, 363 F.2d 385 (2nd Cir. 1966) (Pacelli case), 171-172
U.S. v. Mandel, 437 F.Supp. 258 (D.Md. 1977) (Governor Marvin Mandel case), 176,
U.S. v. Western Electric, 900 F.2d 283 (D.C. Cir. 1977), 167
Work v. U.S., 243 F.2d 660 (D.C. Cir. 1957), 130-131

Olympic Games negotiations, 214-215
partner in, 153
pro bono cases, 130-31, 134, 153-54, 189-90,
railroad clients, 151-152
returning to the firm, 152-153
Supreme Court practice, 134, 155-156, 177-182
Toshiba Corporation International Advisory Group, 215-216, 194-196

Legal philosophies, 53
appellate advocacy:
amicus briefs, role of, 166-167
arguments in circuit courts and the Supreme Court,
comparison and contrast, 164-165
before the Supreme Court, 182-183
briefs, effective writing of, 162-163
elements of, 157-158, 160-161
judges, personal relations with, 184-185, 206
noted lawyers, 204-205
oral argument, 161, 163-164
preparation for, 158-159, 183-184

jurists, effect of personal life on judicial views, 186-187
judges, qualities of a good, 208-209
jurisdi, the role of, 209-211
lawyers and pro bono work, 188
Solicitor General, qualities of a good, 207-208
trial strategy and the appellate record, 176

Legal profession:
law firm associates, changes in the 1950s, 124-126
practice of law, changes in since the 1950s, 110, 126-127

Literary career:
  awards, 115
  *Death and the Supreme Court*, 114-118
  law journal articles, 130
  sued for libel, 113

Literary interests, 13, 33-35

Marriages, 50, 79-80

Mentors and influential teachers, 36-37, 44, 132

Money, attitude toward, 53

Nixon, President Richard M., interview with, 217-219

Noted lawyers, 132

P & F (Prettyman & Ferris) Shoeshine Company, 19

Performing arts, interest in, 62-63

Political views, 54-56

Porter, Katherine Anne, friendship with, 119, 155, 199-200

President, D.C. Bar, 202

Presidents, contact with, 140, 143, 149-151, 216-219

Publications:
  article published in the American Bar Association Journal, 114
  assisted William Jackson in publication of book of writings by Justice Jackson,
  *The Supreme Court in the American System of Justice*, 106
  *Death and the Supreme Court*, 114-115, 118

Reagan, President Ronald, interview with, 156

Public Service:
  PEN/Faulkner Foundation, service on board, 197-198
  pro bono work, 188-190
  Street Law program, 190-191
  scholarships, 190-191
  working with children, 189-191

Sister, Courtney Prettyman Paddock, 7-8, 21-22, 64, 78

TV documentary on the death penalty with Truman Capote, 119-122, 156

U.S. Army career:
  drummer, 25
  effect of, 26, 27, 221
  infantry, 21-27
  injured, 24-26
  joins, 20

Views on:
  pro bono obligation, 188-189
  Vietnam War, 26-29

Prettyman grandfathers, 2, 3, 4, 5, 9
Prettyman, Jill Savage, 79, 80
Prettyman, John, 1
Prettyman, Lucy Hill, 5
Prettyman, Ty, 79, 80
Princeton University, 31, 35-36
Pro bono matters, 53, 123-124, 127-28, 130, 188-89
Hogan & Hartson's commitment to, 127-128, 188-189
Views of EBP, Jr. on, 53, 127-128, 130, 188-189
Raus, Juri (see Heine v. Raus), 172
Raven-Hansen, Peter, 217
Reagan, Nancy, 120
Reagan, President Ronald, 119, 120, 156, 216
Red Cross, The American, 21
Red Cross Roll Call, 77
Reed, Justice, 85
Rehnquist, Chief Justice, 81, 99, 187
Renton, Washington, 181
Reporters' Committee for Freedom of the Press, 155
Revercomb, Judge George H., 51
Rhode Island, 37-40
Riggs Bank, 111
Rio Grande Railroad, 152
Roberts, John, 160, 204
Robinson, Jackie, 145
Rockville, Maryland, 2, 3
Roosevelt, President Franklin Delano, 27, 54, 59, 60
Routh, Steve, 123
Rudolph, Wilma, 145
Ruge, Ferdinand, 36-37, 132
Russia, 214
Salt Lake City, Utah, 16, 17
San Clemente Inn, 217-218
San Diego, California, 16, 18
San Francisco, California, 23
San Quentin, 116, 117
Saroyan, William, 200
Savage, Evelyn, 50, 79
Scalia, Justice, 99, 185, 187
Scotland, 21
Seattle, Washington, 181
Securities Exchange Commission (SEC), 167
Semmes, Tick, 214
Senate Refugee Subcommittee, 191-193
Separate But Equal, a George Stevens television production, 223
Ship of Fools by Katherine Ann Porter, 199-200
Silberman, Judge H. Laurence, 167
Simple Justice, 83-84, 86
Sinatra, Frank, 33
Sing, Sing, Sing, 33
Smith, Joe, 111, 124
Smith, Joseph J., Jr., 108
Smith, Red, 36
Smith, Steve, 149
Smith, Walter, 123
Snow Falling on Cedars by David Guterson, 35
Soldier of Fortune case, (see Eimann v. Soldier of Fortune Magazine), 174
Solicitor General of the United States, 95, 107, 204, 220
qualities needed for, 207-208
Somerset, Maryland, 10
Somerset School, 10, 11
Souter, Justice, 56, 100, 187
South Africa, 156
Southern Pacific Railroad, 152
Spartanburg, South Carolina, 87
Sporkin, Judge Stanley, 224
St. Albans News, 10
St. Albans School, 10-11, 36, 130
St. John's College, 201
St. Louis, Missouri, 16
St. Mary's County, Maryland, 1
Stafford, Jean, 200
Stay-In-School Benefit, 143
Steinbeck, John, 33
Stephens, Judge Harold M., 56
Stevens, George, 223
Stevens, Justice, 105, 159
Stoddard case (see U.S. v. Stoddard), 174
Stone, Robert, 223
Supreme Court, U. S., 81, 208
Argument before theory, 165
Black/Jackson feud, 105-106
Collegiality of, 104-106
Effect of justice's personal life on judicial views, 186, 187
Effect on Justices, 100, 101
Judicial philosophies in, 98-102
Justices:
Black, Hugo L., 69, 82, 99, 105-106
Blackmun, Harry A., 187
Brandeis, Louis D., 69, 107
Brennan, William J., Jr., 56, 210-211
Burton, Harold H., 65
Clark, Tom C., 116
Douglas, William O., 46, 48, 67, 69, 82, 92, 93, 105, 185
Frankfurter, Felix, 15, 46-47, 52, 69, 91-94, 97, 99, 105
Fuller, Melville, 46
Harlan, John M., 92-94, 97, 99, 210
Hughes, Charles Evans, 69
Jackson, Robert H., 46, 69, 81-91, 93, 95-97, 103, 105-106, 107
Kennedy, Anthony M., 56, 73
Marshall, Thurgood, 157, 177-178, 183
O'Connor, Sandra Day, 56, 73
Reed, Stanley F., 85
Rehnquist, William H., 99, 187
Scalia, Antonin, 99, 185, 187
Souter, David H., 100, 187
Stevens, John Paul, 105, 159
Thomas, Clarence, 91, 99, 105, 187
Vinson, Fred M., 47, 82, 84, 87, 105
Warren, Earl, 84, 87, 93, 100-102, 187, 210, 211
White, Byron R., 99

Notable cases:
Allegheny Pittsburgh Coal Co. v. County Comm. of Webster, 488 U.S. 336 (1989), 179-180
Branzburg v. Hayes, 408 U.S. 665 (1972), 177-178
Garrison v. Patterson, 391 U.S. 464 (1968), 122-123, 176
Hughes Tool Co. v. Transworld Airlines, Inc., 410 U.S. 975 (1973) (TWA case), 155
Jones v. Wolf, 443 U.S. 595 (1979), 155
Plessy v. Ferguson, 163 U.S. 537 (1896), 86

Relations among the justices, 82, 92, 104-106
Reversal of EBP by, 66-68
Supreme Court Historical Society, 129
Switzerland, 80
Taiwan, 29
Tamm, Judge Edward A., 58, 157
Tatel, Judge David S., 223
Taylor, Arthur, 214-216
Teleprompter Cable Systems v. FCC, 543 F.2d 1379 (D.C. Cir. 1976), 167
Teleprompter case (see Teleprompter Cable Systems v. FCC), 167
Texas, 80
The Evening Star, 111
The Ginger Man by J.P. Donleavy, 200
The Great Gatsby by F. Scott Fitzgerald, 199
The New York Times, 41
The Providence Journal, 37, 38-40, 41, 42, 132
The Supreme Court in the American System of Justice by Justice Jackson, 106
The Three Musketeers by Alexandre Dumas, 13
The Washington Post, 41, 154
The Washington Times, 41
Thomas, Justice, 91, 99, 105, 187
Time Magazine, 98, 155
Tittle, Y.A., 145
Toshiba Corporation International Advisory Group, 215-216
Trailways Lines, Inc. v. I.C.C., 766 F.2d 1537 (D.C. Cir. 1985) (Greyhound Lines cases), 171
Tracy, Dick, 13
Treasure Island by Robert Louis Stevenson, 13
Treasury Department, U.S.
Bureau of Internal Revenue, 60
Internal Revenue Service, 60
Tribe, Larry, 167, 205-206
Trimble, South, 3
Truman, President Harry F., 29, 54, 55, 57
Tunney, Gene, 145
TWA case (see Hughes Tool Co. v. Transworld Airlines, Inc.), 155
Twain, Mark, 34
U.N. Plaza, 148
U.S. v. Armone, 363 F.2d 385 (2nd Cir. 1966), 171
U.S. v. AT&T, 567 F.2d 121 (D.C. Cir. 1977), 193
U.S. v. Stoddard, 875 F.2d 1233 (1989), 174
U.S. v. Western Electric, 900 F.2d 283 (D.C. Cir. 1977), 167

U.S. Court of Appeals for the District of Columbia Circuit, 57
Argument before, theory, 165
Judges:
Bazelon, David, 68
Burger, Warren E., 68, 131, 132, 157
Danaher, John A., 68
Edgerton, Henry W., 131
Fahy, Charles, 68, 131
Ginsburg, Ruth Bader, 56
Leventhal, Harold, 68
McGowan, Carl, 68
Mikva, Abner J., 167
Miller, Wilbur K., Jr., 68, 69, 157
Silberman, Laurence H., 167
Stephens, Harold M., 56
Tamm, Edward A., 58, 157
Tatel, David S., 223
Washington, George Thomas, 68

Notable cases:
Francis Gary Powers/U2 incident, 62, 77-78

Teleprompter Cable Systems v. FCC, 543 F.2d 1379 (D.C. Cir. 1976), 167
U.S. v. AT&T, 567 F.2d 121 (D.C. Cir. 1977), 193
U.S. v. Western Electric, 900 F.2d 283 (D.C. Cir. 1977), 167
Work v. U.S., 243 F.2d 660 (D.C. Cir. 1957), 130-131

U.S. Court of Appeals for the Eighth Circuit, 174
U.S. Court of Appeals for the Fifth Circuit:
Pillsbury Mills case (see Pillsbury Co. v. FTC), 124, 173-174
Soldier of Fortune case (see Eimann v. Soldier of Fortune Magazine), 174

U.S. Court of Appeals for the Fourth Circuit:
Juri Raus case (see Heine v. Raus), 172-173

U.S. Court of Appeals for the Ninth Circuit:
General, 14
Exide Electronics case (see Hendry v. Exide Electronics Corp.), 174-176, 184

U.S. Court of Appeals for the Second Circuit:
Pacelli case (see U.S. v. Armone), 171

U.S. Court of Appeals for the Sixth Circuit:
Stoddard case (see U.S. v. Stoddard), 174

U.S. Court of Appeals for the Tenth Circuit:
Garrison case (see Garrison v. Patterson), 122-123, 176

U.S. District Court for the District of Columbia:
EBP, Jr., as Chair of Committee to Write the Bicentennial History of the D.C. Circuit, 129
Jackson v. U.S., 395 F.2d 615 (D.C. Cir. 1968), 156-157

Judges:
Harris, Stanley S., 52, 53, 108
Matthews, Burnita Shelton, 133
Oberdorfer, Louis F., 134
Sporkin, Stanley, 224
Tamm, Edward A., 58

U.S. v. AT&T, 567 F.2d 121 (D.C. Cir. 1977), 193-194
U.S. v. Stoddard, 875 F.2d 1233 (6th Cir. 1989), 174

U.S. v. Western Electric, 900 F.2d 283 (D.C. Cir. 1990), 167

United States Courthouse for the District of Columbia, named for EBP, 76

University of Maryland, 200

University of Virginia Law Review, 43, 44, 45, 47, 49-50

University of Virginia School of Law, 32, 40-50, 81, 91, 146

Moot Court, 45, 50

University of Virginia School of Law Legal Forum, 45-49, 146

Van Dyne, S.S., 13

von Kann, Curtis E., 217

Vidal, Gore, 198

Vietnam, 26, 27, 28, 147, 192

Vietnam War, 27-28, 191-193

Vince Pacelli case (see U.S. v. Armone), 171, 172

Vinson, Chief Justice, 47, 82, 84, 87, 105

Virginia, 80

Virginia Law School, (see University of Virginia School of Law)

Voluntary D.C. Bar Association, (see D.C. Bar), 61, 76, 130

Warner, Senator John, 71-72, 77

Warren, Chief Justice, 84, 87, 93, 99, 101-102, 187, 210, 211

Judicial philosophy of, 100-102

Methods of working, 88

Warren, Red, 200

Warren, Robert Penn, 200

Washington, D.C., (see District of Columbia)

Washington, Judge George Thomas, 68

Washington Board of Trade, 61, 76

Washington Gas Light Company, 111

Webster, David, 112

Welles, Orson, 155

Wellesley College, 36, 79

Welty, Eudora, 34-35, 200

Westcott, Glenway, 223

Western Electric case (see U.S. v. Western Electric), 167


West Virginia, 179

White, Justice, 99

White House, The 143, 150-151

Williams, Edward Bennett, 70, 112, 119, 219

Williams College, 30

Wills, Maury, 145

Wilson Administration, 54

Wilson, President Woodrow, 3

Wise, George, 111

Woonsocket, Rhode Island, 37
Work, Ella Mae, 130-131
World War II, 20-27, 61
Wounded Knee, South Dakota, 156
Wright, Charles Alan, 155, 205
Wright, Judge J. Skelly, 119
*Yale Daily News*, 31, 41
Yale Law School, 42
Yale University, 5, 11-12, 30, 31, 32, 35, 51-52, 79
Young, Lester, 33
Mr. Kapp: We’ve talked in a number of these sessions about your long and outstanding career as an appellate advocate. I wonder if you could share with us your views as to other outstanding appellate advocates. Are there some people that, that immediately come to your mind here?

Mr. Prettyman: I hate to list them, because leaving people out sometimes offends them, but so long as I make it clear that I’m not giving a comprehensive list, I must tell you the first person who springs to mind is our partner, John Roberts, who I think is quite extraordinary. As I’ve mentioned, he’s articulate, and he brings self confidence to the argument. He’s one of those people who is totally able to convince himself that, not only is his side right, but any person in his right mind would agree with him. When you get in that frame of mind, you can be very persuasive. I appeared against John in a case because he was then in the Solicitor General’s Office, and I lost that case 5-4, which I very much resented since I had been a kind of mentor to him when he was here at the firm. [Laughter] But he beat me legitimately in that case. I have gone back and read his opening several times -- the six sentences that he used to open his argument -- and it was as effective as I’ve ever heard in the Supreme Court. It was a synopsis of his position that was extremely compelling, a beautiful use of his time, if you will. I’ve also heard him give answers to hypothetical questions that I thought were sheer genius. I think Bruce Ennis is very effective. He is a quiet advocate, extremely well prepared. He’s not jostled easily by tough questions, and he has an intelligent
theory of his case. I think Phil Lacovara, who does not take notes to the rostrum, who does not have any kind of formalized moot court, is very effective. I was once retained to help prepare him in a case, which shows that although he may not have a formal moot court, he does understand the importance of total preparation. He's very articulate on his feet and can be very persuasive. Charles Alan Wright in his day was fabulous. There are any number of others, although I have to say in all candor that several advocates who will go unnamed who have prominent reputations, in the sense that they've argued a lot of cases in the Court, are not necessarily in my view terribly effective. To put it another way, there are only a dozen or so really talented people who do this all the time. The same names keep popping up on the same lists, but just because a name is on that list does not necessarily mean that that person is someone I would choose to argue my case. I did not mention Larry Tribe, but I should. Extremely intelligent advocate; I've never really seen him stymied on a question, very bright. My only hesitation with Larry is that I think he's somewhat controversial with a few members of the Court, and I don't know quite how that balances out in the equation when you're attempting to be effectively persuasive.

Mr. Kapp: You think that might affect the results, do you?

Mr. Prettyman: No, it's so hard to say because I've heard cases argued horribly, where the advocate won, and I've heard beautiful arguments where the
advocate lost. So you’re tempted to say that it makes no difference, and yet the Justices will tell you that these arguments do make a difference.

Mr. Kapp: I was thinking more in terms of your characterization of Larry Tribe as controversial in the minds of some Justices, whether you think that may affect their...:

Mr. Prettyman: I certainly don’t mean to imply that just because Larry Tribe is in the case, he’s going to lose a few votes. I don’t mean that at all. But I do mean that in a very, very close case, where a particular Justice is right on the line, it is helpful to have that Justice in your camp on both a personal and professional basis -- that is, someone who likes you and tends to believe in where you stand and, all other things being equal, would like to help. Now, it’s going too far to say that that really makes a difference in a vote, but since we don’t know why judges make up their minds in most instances in close cases, we don’t know what it is that pushes them over the edge in one direction or the other, and they themselves probably do not know in some instances, we simply throw a lot of things into the mix, including the unknowable. It could be that a Justice has a cold that day, or he got mixed up in a traffic jam that morning. You don’t know what his or her attitude is at any particular moment when a decision is made, and all I’m saying is that in light of that, if I were choosing my own attorney to argue my own case, I would choose someone who does not carry the burden of perhaps not having the full confidence of all the Justices.
Mr. Kapp: You’ve appeared in a number of cases in which the United States was on the other side. I wonder if you’ve got any views about the qualities of a good Solicitor General?

Mr. Prettyman: It is extremely important that the Solicitor General not be viewed as simply the mouthpiece, if you will, of a particular Administration. Rather, the Court should have confidence that the Solicitor General views himself as an officer of the Court, as someone who is there to protect the Court from bad cases, who will never lie to the Court or stretch the truth. I do not mean somebody who toadies to the Court, but rather someone who is independent and who recognizes that he has a duty to the Administration, yes, but he also has a duty to the Court and to the country to present what in essence is a non-political view -- a very legal and sustainable view, one that’s supportable, one that does not waste the Court’s time just so the Administration can posture in the papers so as to gain political advantage. I think respect is the key to any good advocate in that Court, but it’s particularly true of the Solicitor General that he or she must enjoy the reputation with the Court that the truth will be told, that there will be no cutting corners, and that the views espoused really are in the best interest of the United States. And there have been a number of instances of that. I think most Solicitor Generals I have known have had that reputation. I think that a very few in my lifetime have not enjoyed that kind of reputation. It’s extremely important that the Justices look kindly upon the Solicitor General, even when they don’t agree with
him, and that they believe that he appreciates their role and what they’re up to, that he will help them as much as possible to reach the right result.

Mr. Kapp: If you had to name some of the lawyers that fill that role, who were particularly outstanding in that role, who would come to mind?

Mr. Prettyman: Rather than getting into the more modern ones, because they are very difficult to describe without talking about their good points and their bad points, I think I would prefer to hold up as my hero Robert Jackson. While I did not hear him argue as Solicitor General, I’ve read some of his arguments and talked to a number of people in preparation for an article I wrote who had heard him argue, and he certainly sounded to me like the ideal person for the job. Very hard working, very independent, extremely astute, he had that wonderful ability to talk on an even level with the Justices. I don’t mean to imply a lack of deference; I just mean that he felt an equal to them, and they felt an equal to him. He could argue in a conversational tone with a little bit of humor and was terribly persuasive.

Mr. Kapp: Just turning here to appellate judges. We’ve talked about some of the people who you particularly admired. Some people think that judges should be legal innovators, Circuit judges should be legal innovators, illuminating issues for the Supreme Court. Others argue that they should merely apply the law, leaving the innovation to legislatures and the Supreme Court. What do you think about that?
Mr. Prettyman: I'm not sure I fully understand those distinctions. If by innovators you mean, for example, that they take a bare statute and interpret it in a way that gives it a whole new meaning Congress never thought of, I'm not a great admirer of that. But on the other hand, if you take something quite different, namely, a provision in the Bill of Rights, for example, which is deliberately general and obscure, and attempt to interpret it in a way that makes sense in the light of what is actually going on in the world around us, I don't think that's necessarily being innovative. That is simply doing your job, explaining not only to other judges and lawyers but to laymen how the Constitution should work, how it applies to our daily life. I've always had trouble with that dichotomy that you've just drawn. It is quite true that there are a few judges who have a kind of quasi-political agenda and who see every case as an opportunity to advance that agenda. I don't believe in that. That simply misconstrues the role of the judge. But on the other hand, when basic principles come into play, and someone either in a civil or a criminal case has been harmed in a way that the law recognizes, I don't think it's being innovative to make certain that there is a remedy and to explain why it is that the law has to recognize that remedy and forcefully apply it. The line between the two is a lot thinner and a lot more amorphous than your question implies.

Mr. Kapp: Do you think that, had you had the opportunity to serve as an appellate judge, that you'd have gravitated in the direction of judicial activism or judicial restraint? Where do you think you would likely have come out?
Mr. Prettyman: I would like to think that I would have gravitated to standing in the shadow of Justice Brennan. He is a man whom I thoroughly respect. His detractors would say that he is a judicial activist. I never looked on him in that fashion, and that's why I say I think your questions presume too much. I don't think he thought of himself as an activist. You get closer to that label in an Earl Warren, but I do not put Earl Warren in the same class as Bill Brennan, even though they reached similar results in many cases and joined each other in many opinions. I think they did it by a slightly different route. In some cases, Earl Warren did it almost viscerally. I think that Bill Brennan in most cases did it intellectually and with the law as he saw it on his side. I don't mean to denigrate Earl Warren, but Brennan was the more ideal judge for me, someone who truly saw the Constitution as a living document and that the only way to preserve it was to make it apply to our day-to-day affairs, and who thought that it had deliberately been left a somewhat general document by our founding fathers for that very reason, so that it would not have to be amended every third week because something unforeseen had come up. But you see I also admired the second Justice Harlan, who took a more conservative view of the law than did Justice Brennan. The reason I can admire them both at the same time is that I think they both approached their work in a very workmanlike way, very professional way, intellectually, positively, they both were trying to do the right thing as they found
They were not trying to impose a straightjacket based on some view of how the world should be. It’s difficult to explain, but I liked both of them as judges.

Mr. Kapp: Do you think that history is likely to treat either of them as favorably as Justice Warren?

Mr. Prettyman: I think history will treat both of them better than Chief Justice Warren, yes.

Mr. Kapp: Notwithstanding the fact that the times sometimes make the man?

Mr. Prettyman: Earl Warren arrived at the Supreme Court at exactly the right moment in history, and I think he made tremendous contributions. We’ve talked about Brown and the fact that history might have been different if he had not arrived when he did. But in terms of overall performance, there’s no question in my mind that Brennan, for example, made a greater contribution to the law. No question at all in my mind.

Mr. Kapp: You and I have talked over the years about political campaigning and I know you’ve done some of that yourself over the years. You at one time mentioned to me some political campaigning you did with Warren Beatty. Would you like to talk about that at all....

Mr. Prettyman: Well, it was only a single day. This was when Bobby Kennedy was running for President, and Warren Beatty had expressed to Bobby the fact that he would like to participate, but he’d never done anything political before.
Could somebody come help him? And so Bobby sent me out to Oregon, where I had breakfast with Beatty, and we started in on this full day of campaigning. He was very nervous, he was concerned that he would be asked questions about Bobby's record that he couldn't answer, and I simply filled him in as best I could on Bobby's various positions. Warren had already read a good deal about it, so it wasn't that hard. And then we started off and we went to a few shopping centers, where of course everyone, the women particularly, were extremely enthusiastic about this movie star, and they reacted very positively and couldn't have cared less what he really had to say. But we then went to a college, and I forget which one it was, but we were in an auditorium which was absolutely chock full of people hanging off the walls. And he had hardly gotten anything out of his mouth before this young woman raised her hand. "What are you doing here?" she said. "Why are you here? You are some movie star and you think you're going to come in here and tell us how to vote for President of the United States. Who do you think you are?" He was only momentarily shaken, and then he said, "Well, I'll tell you why I'm here. Look around you." He said, "You know more about Bobby Kennedy than I probably ever will. You're much better informed than me, but if you were holding this session, who would be here? No one. I'm here because I can draw people and I can get a full room, and now with everybody here we can exchange views and we can learn from each other."

Well, the place just went crazy. [Laughter] They loved it. That answer was so successful that he calmed down and got his wits about him and was really
terribly impressive. Many years later I was at a reception in Washington, Beatty was there, and he saw me across the room and came over and said, “Why Barrett, how are you? How have you been?” That day of campaigning had remained in his mind as a very emotional time, I guess not only because it was his first time ever campaigning -- and of course he became very politically active thereafter -- but also because of what happened to Bobby, and so apparently he never forgot that day.

Mr. Kapp: You also at one time told me about having invented a children’s placemat? Can you tell us about it?

Mr. Prettyman: I got the idea when my own children were quite young of a placemat that has a kind of acetate surface to it, and you put the hot plates down on top of that. But you can also lift up the surface, which is attached to the top end, and there is a picture under there in seven different pieces, like a jigsaw puzzle, and numbered one to seven. Beginning a week before a child’s birthday or before Christmas or whatever it is that he’s celebrating, the child will tear off piece number 1 of the jigsaw puzzle. There is a second picture underneath the top picture, and it fits into the top picture so that you now have a new picture. Each day, as you pull off a new piece, your picture changes. So that, for example, seven days before Christmas you might have Santa Claus asleep in a chair, and by the time you get to Christmas he is in a sleigh waving his arms and flying off into the night. It’s very difficult to explain and very difficult to make. It took a lot of work, because each picture on the bottom had to fit exactly into the picture on top so that
you had a new picture each time. Anyway, I got an artist and Tick Semmes, who was in patent work, and Arthur Birney, who was going to be my production and distribution man, and perhaps one or two other people. We went into it together and obtained a patent on it. We then went around to different stores, and this shows how timing is everything. The stores loved it, but it turned out that in those days, to manufacture this thing would have cost about twice as much as the stores told us we could sell it for. In other words, assuming that we could sell it for $15, it would have cost us $30 apiece to make these things. Now, the reason I say that timing is everything is that if we had done this today we probably could have made that for $3 and made a profit. But each of those pieces had to be cut in a way that you could do so easily today but it was so difficult to do in those days. So the patent to this is absolutely no good, and it finally ran out and is now in the public domain. But I always liked that placemat, and my kids liked it too.

Mr. Kapp: You never sold any though?

Mr. Prettyman: Never sold a single, solitary one. [Laughter]

Mr. Kapp: I know that while I was at the firm I believe that you made a trip to Russia with personnel from CBS in an effort to negotiate some aspect of the Olympic Games. Could you talk about that?

Mr. Prettyman: Yes. CBS wanted the Olympic Games that year and I'm sorry that I can't remember off the top of my head just which year that was. But it was when Arthur Taylor was President of CBS. Arthur Taylor was the
youngest President in CBS history. He became a friend of mine in those days and remains a friend today. He is now the President of Muhlenberg College in Pennsylvania, which because of him is a client of the firm's. And Arthur wanted to go over to negotiate those games and asked me to come with him. I may or may not have mentioned to you that Arthur attempted to get me to be a Vice President of CBS in charge of about six different divisions, which I obviously did not take because, primarily, I did not want to move to New York and I also wanted a degree of independence that I knew I would not have in that position. But in any event, as a lawyer for CBS, I went with Arthur to Moscow at a time when it was still a very frightening place, and I remember in our hotel rooms we assumed that we were bugged and perhaps even photographed, so that every time Arthur and I wanted to talk about something we had to go out in the garden and walk around and plan what we were going to do. We were not successful in those negotiations. I forget whether NBC or ABC got the Olympics that year, but Arthur simply was not in a position to offer as much as the other networks, and consequently we were not successful. But our dealing with those people and our negotiations were very difficult and very interesting. I wouldn't have missed that trip.

Mr. Kapp: You even as of today have some international involvements. I know that you're doing some work with Toshiba now. Can you tell us about that?
Mr. Prettyman: For the last four years I have been on what they call the International Advisory Group of Toshiba, and although it’s called international, there are actually four Americans in the group, one of them being my friend Arthur Taylor. These are simply three businessmen and me who were chosen by Toshiba to, be advisors on all aspects of the company’s business. We meet twice a year, once in Japan and once over here. The top people at Toshiba -- that is, the Chairman, the President and the top Vice Presidents -- all meet for several days. They spend a good deal of time telling us about the Company, what it’s doing, what its prospects are, and what its problems are, and we spend part of the time advising them, particularly on the American aspects of their business. We talk about everything from Board makeup to advertising to politics in America to whatever. Now they are reorganizing the group, making it truly international, and therefore I am getting off of it as of the last meeting, which we just held in New York. So I’ll no longer be a part of that. But it gave me a unique opportunity not only to see a lot of Japan and to make some good friends at Toshiba but to watch the Japanese at work, and you know, they really are quite different from us in the sense that they negotiate differently, they think differently. They’re just very, very interesting people, and I don’t know that I could have gotten that kind of close relationship and intimate knowledge of how they work if I had not had that experience. So I value that a lot.

Mr. Kapp: You’ve told us about a number of contacts that you’ve had over the years with U.S. presidents. You interviewed Ronald Reagan at one point,
you were in the Kennedy White House, stayed on very shortly into the Johnson
White House. I know that you’ve had some contact with the present occupant.

What about Richard Nixon? Did you have any contact with him?

Mr. Prettyman: We represented Ernie Fitzgerald, the CIA whistle
blower who was fired during the Nixon Administration, he claimed because he had
tested truthfully about cost overruns before a Congressional committee. And he
sued Nixon, and the suit proceeded after Nixon was President for actions which had
been taken while Nixon was President. During the course of that suit, several of us
traveled to San Clemente to take Nixon’s deposition. And we spent two days there,
Curt von Kann, Peter Raven-Hansen and me. We stayed at the San Clemente Inn,
we took the deposition in Nixon’s office attached to his home. His deposition had
been taken once or twice before, and I understood that he had been called
“Mr. Nixon” and that the attitude toward him had been less than deferential. I took
a whole different tack. I called him “Mr. President,” I was quite deferential. I let
him talk at length about anything he wanted to talk about, which drove Jack Miller,
his attorney, crazy. But we found that by letting President Nixon talk at length, we
got some good information every once in a while. He might talk about his inroads to
China, which had absolutely nothing to do with Ernie Fitzgerald, but during the
course of his discussion he would work in something having to do with Fitzgerald,
and we found that that was the best way to do it, rather than having a narrowly
circumscribed, curtailed, deposition. If we just let him talk in almost a
stream of consciousness, we would eventually get some good information. So I regarded it as a very successful deposition, and, in fact, we settled one aspect of the case with his payment of $142,000, although eventually he won on the basic issue in the Supreme Court, in a case that I did not argue.

I thought the most interesting thing about Nixon in that case was that he had quite an unusual interest in where we were staying; he talked about the ladies down at the San Clemente Inn, and how he understood that they were really something. His attitude seemed to be that he really wanted to be one of the boys, that he wanted to show that he could look on the passing ladies with as much interest as the rest of us. It reminded me of high school. At the end of that deposition, we parted with a kind of mutual respect, it seemed to me, in the sense that I recognized his talents and I think he appreciated my treating him with due deference, as a former President.

Several years later, when I was representing Nelson Bunker Hunt, Nixon sent word through Jack Miller that he'd never met Bunker and would like to meet him, and would Bunker come to New York, where Nixon was then living? He asked me to come along with him. So the arrangements were made, and at the last minute Bunker couldn't come and I had to cancel. Jack Miller called back and said that Nixon would like me to come anyway. So I did; I went up and spent an afternoon with Nixon at his house in New York. It was a very strange afternoon, because I really was not sure why I was there. Nixon reminded me a lot of Bobby
Kennedy in the sense that he had virtually no small talk. Nixon, I think, could talk for hours about politics, world affairs, and so forth, but he had virtually no ability simply to chat, and that was exactly the way Bobby was too. So we didn’t talk politics, we talked a little bit of law, we talked a lot about family. But it was difficult, and while I tried to leave several times, he didn’t seem to want me to go. I couldn’t figure it out because here was a man who knew people all over the world, he could not have been lonely, and here I was both his political adversary and his case adversary. But there it was, so I spent several hours with him and finally left, and I must say as I walked away I was bewildered -- I didn’t know quite what to make of it all.

Mr. Kapp: Why do you think he wanted to meet with Nelson Bunker Hunt in the first place?

Mr. Prettyman: Just because he was somebody different, somebody in the news, somebody who had had a good deal to do with the silver market, and I think it all kind of intrigued him. My guess is that he did that a lot. You know Len Garment tells of a wonderful luncheon Nixon had with Edward Bennett Williams in New York, where they spent hours joshing each other.

Mr. Kapp: This is Nixon again? You’re still....

Mr. Prettyman: Nixon who had lunch with Edward Bennett Williams. No, I think Nixon enjoyed that, after he got out of office and could relax a little, I think he enjoyed getting to know all kinds of different people.
Mr. Kapp: Sort of curious. . . .

Mr. Prettyman: Yes.

Mr. Kapp: We've talked a lot about the highlights of your career and they've been many....

Mr. Prettyman: Talk about the low lights now?

Mr. Kapp: And there've been many and it's been a very distinguished and very varied career. What about -- are there any disappointments or any regrets, as you look back now?

Mr. Prettyman: I regret that I was not Solicitor General. I do not regret that I did not go on the bench. I've been more excited by being a practicing lawyer. If I were doing it over, I would have gotten into my specialty sooner, I would have skipped the antitrust and gone directly to oral arguments. I also think if I were doing it over, I would have carved out more of a niche within the appellate advocacy area, not so that I would be like, for example, a Floyd Abrams and do only First Amendment work, but as part of my general appellate advocacy I would have had one small area in which I would have been the one expert. Maybe it would have related to First Amendment cases -- I don't really think it's important what it would have been -- but I would have written and spoken and become the expert in some narrow area that I could do along with my general practice. I think that would have been helpful.
You know, I really don’t have a lot of regrets, but I have to tell you that I think this springs in part from what we talked about very early on, and that is my war experience. And I’ve talked to some other people who’ve had that same experience, including the fellow who just wrote a book called *Before Their Time*. I think when you have that experience early on, particularly when you’re in your teens, if you come out of it whole -- that is, if you don’t come out of it harmed emotionally or physically -- you tend not to have many regrets because the very fact that you’re alive is such a miracle that you tend to think things are pretty much fun, because you focus a lot on the alternative. Sure, there are some relationships, particularly, I wish I’d done better. But in terms of ambitions, I would like to have been Solicitor General. I think that that’s a great job but, oh yes, there is one. I would have tried my damnedest to write a really fine work of fiction. I would have written more if I’d had my druthers. I am sorry about that.

Mr. Kapp: It’s not too late you know....

Mr. Prettyman: I know that, and I’m hoping that if my health holds out and I have enough sense to get out of this firm before I’m totally infirm, I will indeed write. But I would have done a better job with that if I’d started earlier. So that I regret, I really truly regret that. I don’t know that I can write fiction. I probably can’t. It’s extremely difficult to do, much more difficult than most people understand, but I would at least have liked to try that early on. That is a real regret, yes.
Mr. Kapp: Just for a moment, about the first of your two regrets. Was there any time when you felt that becoming Solicitor General might be in the cards?

Mr. Prettyman: Only if President Kennedy had lived. And I want to make clear that I never got an indication that I was in line for it. I don’t mean to imply that at all. I just meant that in the normal course of events, I suppose it would have been possible. And then, of course, if Bobby had become President, I like to think that I would have been at least among those considered. But again, I had absolutely no indication that I was ever on a list or anything of that sort. Those are the only two situations, because Carter really knew nothing about me. Johnson knew nothing about me. And so I just don’t think it was really in the cards, except for the two Kennedys.

Mr. Kapp: Well we’ve talked about a lot of things here. I’ve initiated many of them. You’ve initiated a few. Any other things that you’d like to talk about now?

Mr. Prettyman: I don’t think so. I think we’ve covered most of the things that I would have talked about. Perhaps some of them I would have dealt with in a little more length, but I think we’ve pretty well covered it. The only thing I have to say to end it off is how much fun it’s all been. As you can see, I’m still hanging around and Nubby Jones’s problem that “you’ll never be able to get rid of him” has certainly come true. [Laughter] He was absolutely right. I am still hanging in here, and that’s because I do have fun. The time is coming, obviously,
when I’ve got to step down and that may well be this year. But in the meantime, it’s just been a ball. I’ve really, really enjoyed it.

I believe in having fun in whatever legitimate way you can. For example, I have been a member of the Alfalfa Club since 1965. Most members take as their guests family members or close personal friends, often the same guests year after year. I have taken different guests every year, including six Supreme Court Justices and a number of writers, such as Norman Mailer, George Plimpton, Richard Bausch, Allan Gurganas, Robert Stone, Glenway Westcott, Elmore Leonard, and J. P. Donleavy. I’m the only one in the Club who invites writers.

When I took my six-month Sabbatical in 1977, I body-surfed my way around the world. I started in Peru and simply followed the sun. My favorite beach for body-surfing was not in Hawaii or Australia, but Tahiti. The waves there start way out, so that if you catch them right, you have to come up for air before you get all the way in. It was a wonderful experience.

I also acted as a consultant to George Stevens’ TV program, “Separate But Equal” in 1992. Among other things, that involved my going to Florida and showing Burt Lancaster and Sidney Poitier how John W. Davis and Thurgood Marshall conducted their arguments in Brown v. Board of Education.

Just to give you another small example of the little things that happen but nevertheless are so enjoyable. Judge Tatel lets me look at his opinions after they come down, and I read them and make suggested changes and corrections. It’s
sometimes gotten his law clerks quite upset. Well, that is just a ball. And there are a number of things like that going on. Judge Sporkin is going to have a summer program here, where he has students from different law schools all over the country come in and participate in a program that he conducts in court, and he has asked me to organize a group of speakers from the firm who are going to go over to his chambers during the summer, once a week, and we’re going to talk to these kids. There’s another program that the Street Law people are putting on, where they’re bringing kids from inner-city schools from around the United States to Washington both to see the sights and to be taught about their legal rights and responsibilities. And I’ve helped organize that. There are a lot of these things going on that I get a kick out of and that really enervate me. So the people, particularly lawyers, who sit in their offices despondent day after day, I must say I find that remarkable. First of all, if that were me I’d fold it up and move on and set up a hot dog stand next to a surfing beach somewhere. But secondly, I just don’t understand the attitude because there are so many fun things to do out there. The whole thing is really just a gas.

Mr. Kapp: You know because people presumably will be reading this thirty, forty years from now....

Mr. Prettyman: Can’t imagine why they would. [Laughter]
Mr. Kapp: Well maybe it’s wishful thinking on both our parts. How do you think you’d like those people to remember you, or how would you like to be remembered, do you think?

Mr. Prettyman: Well I can’t imagine why anybody would remember me, and I really mean that most sincerely. But if someone did, I would like to think that they thought of me as someone who had varied interests, who made a contribution not only in terms of the law generally but in a lot of personal lives. Had an impact upon a lot of kids, particularly. There’s one young man I helped out who’s just become a lawyer, another has just became a policewoman, and one who just called me the other day who’s decided to go back to school, which is what I’ve attempted to encourage all of them to do. There’s a fellow who calls me from prison whose case against the District I settled, and I’ve become a kind of mentor to him. I would hope people thought that intellectually I had varied interests, and particularly that I had a keen sense of how important the writing life is and how important fiction is. Fiction seems to be dying out, and I think that’s horrible. It’s extremely important that we keep the novel and good writing alive. So if anybody thought of me at all, I hope they would think of me as someone who did not just go about the dry-dust business of the law every day but who had a variety of interests, at least some of which had an impact.

Mr. Kapp: Well, this has been an interesting and rewarding and stimulating experience for me and I hope it’s been a good one for you Barrett?

-225-
Mr. Prettyman: It has indeed.

Mr. Kapp: And I thank you for it.

Mr. Prettyman: Well, I can't tell you how much I appreciate your taking the time and trouble out of your busy schedule to do this, and I really do appreciate it and I thank you.

Mr. Kapp: Well, it's been my pleasure.