

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

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.

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

it. 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 testified 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 damndest 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 become 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?

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.