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A. LEON HIGGINBOTHAM, JR. ORAL HISTORY, INTERVIEW I

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This assignment is subject to the following terms and conditions:

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(2) The tape recording shall be available to those researchers who have access to the transcript.

(3) I hereby assign to the United States Government all copyright I may have in the interview transcript and tape.

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Signed by A. Leon Higginbotham on February 20, 1984

Accepted by Robert M. Warner, Archivist of the United States, on March 1, 1984

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ACCESSION NUMBER 84-47

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

A. LEON HIGGINBOTHAM, JR.
Circuit Judge
22613 United States Courthouse
Independence Mail
601 Market Street
Philadelphia, PA. 19106

(215) 597-9157

February 20, 1984

Mr. Michael L. Gillette
Chief of Acquisitions and Oral History Programs
The Lyndon Baines Johnson Library
Austin, Texas 78705

Dear Mr. Gillette:

Thank you for your kind letter of January 26, 1984. I am pleased to give you the legal authorization you desire. Candidly, I had put this matter aside, planning to revise the tape at some future date, but I seem to never have found the time. I will let them go in their present fashion with the hope that some time I may be able to make the necessary revisions.

Again, with regrets for the delay and deep appreciation for the extraordinary role which the LBJ Library brings to the marketplace of ideas and to the corridors of history, I am

Sincerely,

A. Leon Higginbotham, Jr.

INTERVIEW I

DATE: October 7, 1976

INTERVIEWEE: A. LEON HIGGINBOTHAM, JR.

INTERVIEWER: JOE B. FRANTZ

PLACE: Judge Higginbotham's chambers in the Federal Court, 9th and Market Streets, Philadelphia, Pennsylvania

Tape 1 of 1

F: First of all, you were born in Trenton. Did you grow up in Trenton?

H: Yes. I went to public schools in Trenton and finished in Trenton' High School.

F: Now, how did a nice young man on the banks of the Delaware get out to the Midwest to go to school at Purdue and Antioch?

H: Well, several reasons why. This was in 1944, and at that particular time it was extremely difficult for blacks to get into engineering schools. As an example, even Drexel University had many, many subtle barriers. Purdue University had the lowest tuition of any first-rate engineering school, and it was cheaper than Rutgers. So for my cost standpoint it was cheaper to go to Purdue than to go to Rutgers. Now I can tell you some extraordinary aspects about the problems at Purdue which I hadn't anticipated or envisioned, but from a cost standpoint Purdue was cheaper. And there was a junior high school principal, a black by the name of P. J. Hill, who had gone to Indiana University and who was really very, very anxious in terms of making certain that as many blacks went to college [as possible].

F: Why do you go to an engineering school to wind up at law school?

H: I went to engineering school because I wanted to be an engineer.

F: You're not like Robert Weaver. He went to engineering school but he fell in love, and he said that the engineering lab so ate up his time with his girlfriend that he switched over to political science and economics so that he would have more time to date.

H: I wish that I could claim that.

F: It's nice and romantic. I don't know whether it's true.

H: What occurred was that though the university was open for admission, blacks could not stay in the dormitory at Purdue. So we stayed in a cooperative house called International

House, which is an old converted house. It was the only place in West Lafayette, Indiana, where blacks could stay. We slept in an attic where they had no heat, where snow would come through the rafters, where you went to bed with earmuffs and three-or four-pairs of pants and heavy socks. So that Purdue University was an environment which was fundamentally hostile. I'd say that out of eight thousand students there were probably fifteen or twenty blacks.

F: Really an endurance contest in some ways.

H: That's right. So that I guess I was somewhat disenchanted about the university.

I can recall Elliott, who was then president, when I went to him in 1945 to suggest that blacks should be permitted to stay in some section of the dormitory--this was the midst of the Second World War--told me candidly, "Higginbotham, you take it or leave it. The law doesn't require us to have blacks in the dormitory." The whole inference is, "you are here by grace, and if you become a troublemaker you can be thrown out."

The second catalyst to my leaving was that I was fortunate enough to make the Big Ten Debate, and when I debated at Northwestern, when we went into a hotel to register, all of my classmates registered and when it was time for me to sign up the manager came over rather abruptly and said, "Look, he can't stay here." Well, [as] part of the whole process in terms of debating the coach always emphasized that you should speak forcefully, precisely, and with conviction. At that moment, in the most weak, mild, milquetoast expression, he said, "Well, where is the closest colored YMCA?" So what happened was that night I stayed in a rat-infested colored YMCA and all of my other classmates stayed at Purdue.

I felt that despite the fact that I was performing quite well at Purdue that engineering was not really the vehicle for social change, and even if engineering was, that a university with such hostility was not the appropriate place for me to put my efforts in. So what occurred was that I had a roommate at Purdue, a fellow by the name of Norman Lichten [?] who was a graduate student who had gone to Antioch, he was white, who knew that Antioch College was then trying to recruit blacks, and I transferred. The day I entered Antioch Martin Luther King's wife Coretta, Scott was her last name then, also entered. That is the reason why I transferred from Purdue to Antioch.

F: You didn't know how much history you were getting connected with, did you?

H: No, not at all, not at all.

F: All right. Then you went to Yale.

H: That's right.

F: And then you came back here to begin work and rose through the ranks. Where did you first get in President Johnson's orbit?

H: I was a commissioner of the Federal Trade Commission, appointed in September of 1962, and a year later, while I was in Brussels, I got a telegram from President Kennedy saying that he was submitting my name to the Senate for confirmation as a district judge here.

F: You rather think that this is working up through sort of third party references that people bring to his attention?

H: Yes, and what happened was, in terms of knowing President Johnson, I never knew him at all before that. I may have met him at a Washington affair with a thousand handshakes.

Then when President Kennedy was assassinated, Senator Eastland at that time was head of the Judiciary Committee, and all of the appointments of blacks as federal officials were held up indefinitely. I believe the rumor is that the only way a black's name would get passed, I've been told by people in authority, was that Senator Eastland would have to be in Mississippi on a matter of business for his constituents. There was sort of an understanding that after he waited and held it up for a substantial period of time it would go through. Well, I was caught in this delaying process. A subcommittee approved me immediately, President Kennedy died, and then we would have in January of 1964 a new term. Since my name had been submitted but since I had not taken office, and since there had been no confirmation, the appointment lapsed. President Johnson resubmitted my name in early January, and it was after that when I met him.

F: How did you get past the Eastland roadblock?

H: Every black did. I could now answer that in terms of the political maneuvering which took place. Senator [Frank] Clark, who was a Philadelphia senator, claims that he worked it out. Senator Hugh Scott, a Philadelphia senator who was a member of the Judiciary Committee, claims that he worked it out. I know that Nick Katzenbach worked with the committee. Nick was then I believe deputy attorney general, and he had charge of these. But I don't know who worked the mechanics out for me or for the other blacks. I have the impression that Senator Eastland felt that he would hold them up for a period of time and then after that let them go through.

F: Just to make you appreciate him. He told me one time that he never had any feeling against civil rights, that in fact it just all ran together in his mind, and I mean with a perfectly straight face. It's amazing sometimes.

I want to stop one moment in this forward progress. You were in charge of hearings for conscientious objectors back there before you got into the judgeship.

H: Yes

F: Was any of that on Vietnam?

H: No. You have to recognize that I am so old that that was pre-Vietnam. The draft was on, but I don't believe that there were any cases which I heard where the issue had anything to do with Vietnam. The issue at that time would be whether the conscience objections were valid. There was a hearing officer process. We served without compensation on this. The design of the process was that, hopefully, recommendations could be made to the department by individuals who had no obligations with the government in terms of payroll or an employee. But I don't believe that there was any escalation of Vietnam, really at that time.

F: No. I don't think that most people knew that anything was boiling over there, that this was their future.

Okay, so you now become a judge. Have you run into Johnson personally yet?

H: Oh, after I became a judge I saw him on many occasions. He invited me and my wife down to the White House on various affairs. I went to some White House conferences where I had the opportunity to talk to him. I guess my earliest detailed conversations with him would be during the White House Conference "To Fulfill These Rights," the exact date of which I think was around 1965 or 1966.

F: I think it was 1966 [June 1, 1966]. You went down to the swearing-in ceremony for Andrew Brimmer.

H: Yes I did, of course, when he became governor of the Federal Reserve System. That's right. I had talked to President Johnson on several occasions during these types of public functions.

F: Now, he had already passed the civil rights acts of 1964 and 1965, and he's easing toward the open housing activities in 1968. Did he ever talk with you about this? Was he hopeful it could be done?

H: I had an extraordinary experience.

May I ask you, when will these tapes be opened?

F: They will be opened at your convenience. We will send you a transcript, and you put whatever retainer on them you want.

H: Okay, fine. There is one aspect that I just wanted to keep within that context.

When Martin Luther King was assassinated, the next day they had this meeting at the White House for which the large picture is up at the Library on the fifth floor. Some of the individuals that were present were Roy Wilkins, Whitney Young, Andy Brimmer may have been there, Clarence Mitchell, Justice Marshall, Bob Wheeler, Vice President Humphrey. By that time, because of the detailed work I had done in the White House Conference "To Fulfill These Rights," I knew the people on the White House staff rather intimately. I knew Cliff Alexander quite well. I believe Cliff had been sworn in at that time as chairman of the Equal Employment Opportunity Commission, for which you see the picture up on the wall. Harry McPherson was counsel to the President, as you know. [McPherson's] daughter was in a tree that afternoon and fell.

F: On the White House lawn?

H: No. I think that she was at home.

F: Home accident.

H: And they were very much concerned about it, so Harry had to go out to the hospital. The President asked the Secret Service if they could reach me and catch me at my office and if I could come back to the White House. At that time, as you of course know, riots were escalating all over the country. There is a good book which has a lot of detail on this as to what was happening in Washington called Ten Blocks from the White House. So I came back to the White House and spent all evening and night with Joe Califano and Cliff Alexander. I had dinner with the President. I know the children with the daughters were there and some key staff people.

We spent a substantial period of time during that night trying to put King's death in perspective.. One of the critical issues was what can a president do with this holocaust to try to bring some order to the nation immediately, but most important, to try to give individuals hope so that they would recognize that violence and polarization were counterproductive. We talked quite late in the night, and I stayed overnight at the White House. We talked the next morning and I left sometime the next afternoon, but I think that was the most detailed one-to-one conversation I had with him..

F: Then where were you when you received news of Martin Luther King's assassination?

H: I was speaking at an Urban League Meeting on the thirty-third floor of the Philadelphia Saving Fund Building, sort of giving them, a talk to motivate the importance of the work. We got word that he had been shot, and we terminated the meeting. Then I went home, and that night, I guess it was the morning, I got a call. It must have been one [o'clock] in the morning, or two, maybe even three. I believe that it was from Joe Califano or Harry McPherson asking me if I could be in the White House the next morning at about nine or ten. So I caught the earliest train there.

F: Did Philadelphia riot particularly?

H: No. On a relative scale, there were no serious and substantial riots in Philadelphia following Martin Luther King's death. Philadelphia had had some riots a couple of years before in North Philadelphia. I think that there were lots of individuals who felt that it was very, very counterproductive. Some of the communities which did the worst rioting had not exploded before.

F: At that White House conference, did the President indicate that he thought he might could use the emotion and turmoil to push for more than ordinarily he could get?

H: Yes. Are you talking about the morning conference at the White House?

F: It always seemed to me that he was very good at given moments, like he used Kennedy's death to push so much. Of course, he never got gun control out of Bobby Kennedy.

H: Sure. He raised the issue pointedly: "Now what can I do?"

F: Yes.

H: The morning session was an extraordinary one because I could, in most instances, measure the type of response which was given by the nature of the institution to which the person belonged. Whitney Young talked a great deal about the expanding manpower program and giving out hope. Clarence Mitchell and Roy Wilkins emphasized the housing and civil right's bill which was then bottled up.

F: I guess Ramsey was on his way to Memphis, wasn't he?

H: I don't believe Ramsey was there at that time.

F: He got down to Memphis pretty quickly.

H: Yes. It's my impression that Ramsey was not there. Joe Califano was there.

F: Right.

H: And Harry McPherson and somebody else.

F: Was the President afraid of a general riot throughout the country, or did he think these would be isolated and would settle down?

H: I think he was fearful. You had had Watts.

F: And Newark and Hough.

H: You had Newark, and you know, many of the aspects that were reported in detail in the Kerner Report. I think that he was concerned about what might happen. And even while we were doing all of these things, as you may recall, we then went to the cathedral where all the justices of the Supreme Court were and they had a brief memorial ceremony that morning. He didn't seem to be as worried about a riot in the morning as he was at night, because from morning to night the situation had changed from whether there was a possibility [to where] riots were jumping up all over the country. The National Guard was called out, and the National Guard had been put in many places.

F: Right. I picked up the idea somewhere that in the middle, I don't know whether it was morning, afternoon, or when, but somewhere in there that the question of whether the President [should] talk to Mrs. King was discussed, maybe even bring her to Washington for her to make a statement.

H: [That came up] somewhere in the process. I don't know, I now cannot separate between the things which happened at the conference where everyone was present and the events which went along the way with the large number of ideas which were being pumped around. But that had been thought of as one of the options. What the closest debate was in the evening was whether he should go on the air, what kind of speech he should give and whether he should come out for the 1968 housing act the same way in which he came out for the earlier act, the civil rights act of 1965. It was very, very tricky, and it was thought that as the rioting got worse the more difficult it would be for the President to deal with that.

F: Did you leave with the idea that he was going to push for the Open Housing Act, or was that still in the air?

H: It's sort of tough to read him.

F: Yes.

H: I had the impression that, of course you're dealing with the President, and was he going through the difficult process of trying to make a judgment or not? Had he made up his mind and then was asking you to approve it? (Laughter)

F: Confirm what he had in mind? At these April meetings was it somewhat of a free-for-all, or did he call on you and you and you and you?

H: Yes, he went around the table and called on various individuals, so that he gave everyone an opportunity to speak.

F: Were you free to interrupt if you had something pertinent to say?

H: If you look at the picture which is on the wall, at the time that picture was taken Mayor Washington was speaking and no one is looking at the President or anyone else except Mayor Washington and maybe one other person. Whitney Young's head is bowed, my head's down, everyone is looking.

F: Yes.

H: So that I don't think that people were sort of in the mood of the type of spirited debate. Everyone spoke their piece, and then you sort of left it at that. There was no strong disagreement with what anyone else said. I think Bayard Rustin was there.

F: That's likely.

H: And I think Bayard Rustin and I, who had no exact constituencies, sort of spoke to the President differently than those individuals who were semi-lobbyists for their institutions. The point which I tried to make to the President, and I was one of the last to speak as I recall, was that all of these proposals were important and I didn't want to get involved in terms of assessing one against the other.

F: Yes.

H: Because he's a legislative genius and a realist, and he knows you aren't going to get twenty-five bills through for the Congress to solve all of the problems which black people think are appropriate. So that he is often going to end up zeroing in on one or two or selectives.

I thought and so did Bayard that the most important aspect, whatever he did and whatever the government did, was to convey to the weak and the poor and the deprived and the black some absolute conviction that within their lifetime and within shorter periods than that the problems would be solved. But the aspect of why individuals were rioting in Washington or Newark or Watts cannot be pigeonholed in terms of why a certain bill was not passed in 1960 rather than 1964. And I really felt that President Johnson recognized this concept, that it was not any specific piece of legislation which would be the sole turning around, but that in addition to talking with specificity about legislative programs he had to focus for the minds of all Americans what he often said in some of his speeches: "We shall overcome, and we shall overcome soon."

F: Yes. Was there any discussion of whether he should go to Atlanta to the funeral?

H: I don't remember at the morning meeting, but staff-wise I think there were discussions.

- F: Yes, I know that he talked with the staff about it.
- H: It was sort of up and down. It was thought that maybe if you don't go, it would be insulting. It was thought that if he went--you know, just how serious the tensions were.
- F: It might turn the funeral into a fiasco.
- H: Right. And therefore it would be interpreted to be an intrusion.
- F: Yes.
- H: Among the people I talked to I think that the ultimate judgment was that Vice President Humphrey would go representing the President.
- F: Did President Johnson ever talk to you about his feelings on Martin Luther King?
- H: He discussed the issue with me, but I was not really one of the President's intimates.
- F: Yes, right.
- H: I was sort of surprised that he asked me to stay and spend the night. And the only reason why I could say that was that maybe some comments which I had made that morning or maybe on a couple of other occasions had come to his attention, because he certainly had thousands of people wanting to advise him on it.
- F: In that evening was the talk proceeding towards something, or were you just talking? Did you have the feeling you were moving?
- H: I felt that he was very pained and very hurt. He was hurt because Martin Luther King was assassinated, and he understood the implications of that.
- F: It looked for a while as if the murderer had made a clean getaway.
- H: Yes, that's right. He was hurt because of the rioting because he felt that it was so counterproductive, and I think he was hurt because he felt that at that particular time that there just wasn't an awful lot he could do to turn it around.
- F: Clark Clifford was there, wasn't he?
- H: Yes, he was there in the morning and in and out during the day.
- F: Was there anyone who kind of acted as a second leader to the President, or was it the President and then the rest of you? I'm trying to get the feel of those conferences.

H: Clark Clifford may have been second leader to the President, but he didn't act as if he was.

F: You'd been there--

H: If you look at that picture I think Clark Clifford is sitting sort of in the back, not even at the table but sort of in a remote seat.

F: You'd been there about a week before for the signing of the Federal Jury Reform Bill. Did you work on that?

H: Yes. Chief Justice Warren had appointed a committee sometime around 1965 of federal judges to look at our jury selection system, and this committee, which is headed up by Judge Kaufman, spent an awful lot of time on analyzing the problems in the federal courts and in dealing with certain types of legislation as to how you can get a representative jury. I spent a lot of time in behalf of this committee, the Committee of the Judicial Conference, which not only dealt with the problems of the jury system but in reaction to the legislation. Now I don't have to tell you at this day I can name many individuals who say without reservation they were the author. (Laughter) But our committee had an awful lot doing with it.

One of the tricky problems was how can you determine what is the representative base for the choosing of juries. Are you familiar with what the magnitude of the problem was before? The key man system? What would occur would be that in many jurisdictions, including here in Philadelphia, the Eastern District, "leaders" in the community would be called on to give the names of people who would be good jurors.

F: You can put good in quotes, too.

H: That's right. So that anyone who would be good would be members of their particular establishment. There had been a whole series of cases in the Fifth Circuit which had held that the exclusion of blacks had been systematic even though not intentional, though in some instances it had been intentional. This was a bill which was important in many, many ways. But if I had to list major, systematic changes, it could not rank anywhere close to the magnitude of importance of the 1964 civil rights act, the 1965 civil rights act.

F: It certainly sounds procedural.

H: To some extent it's procedural. First of all, it only affects people who get into court who have jury trials.

F: Right.

H: I think that it's very important in terms of image; I think it's very important in terms of

justice to have representative juries, but if we had had representative juries from the history of this country that would not have solved the types of problems which the 1964 and 1965 civil rights acts focused on.

F: Now, let's move on to the Commission on the Causes and Prevention of Violence. That of course was kicked off finally by Robert Kennedy's assassination. Where did you enter the picture?

H: Well, I was playing tennis, and when I got home someone said I had gotten a call from the White House. It was again vague. About three minutes later I got the call through, and it's my recollection that President Johnson was on the phone.

F: That's quite possible. He did those things. (Laughter)

H: Then he went on to again say what a tragic situation it was about Senator Kennedy and that he wanted to have this commission. The impression he gave to me--but I think it's sort of like what Harry McPherson says, that Lyndon Johnson had one hundred people who were like a father to him--was that he had just talked to Milton Eisenhower and I was the second person he was calling. Well, in terms of any rational evaluation of my relative importance.

F: You were the number two man on the commission.

H: I thought maybe that he had checked with others, but then he said he was going to call others. Then about, I think, two or three hours after he called me he went on the air and announced the commission and said I was going to be a member of it and Milton Eisenhower was going to be a member of it. The individuals he named would be about two-thirds of those who ultimately ended up. I think Cardinal Cooke [was one]. When he named them, immediately--you know, a few days later there is always a complaint about not being representative. So later I think Walter Menninger, the psychiatrist, was added and a couple of others were added. Oh, you have the list?

F: I have a list here, yes.

H: Do you have a list as to the original and those who were added?

F: No, I don't have the added. You've got Cooke, [Senator Roman] Hruska and Hale Boggs, Congressman McCulloch, of course Milton Eisenhower, Albert Jenner, Patricia Harris and Eric Hoffer and Senator Philip Hart and you. Where did he get Eric Hoffer?

H: Well, many of us wondered. (Laughter)

F: I wondered what he had to contribute?

H: Are you familiar at all with the story about the President's relation with Eric Hoffer? Now this is on hearsay: apparently, the President saw Hoffer on a television program a couple of times when Hoffer was probably hawking one of his books. Hoffer was the philosophical longshoreman. I think the President liked him, and I think he was extremely supportive of the President; Vietnam was rising, and he was extremely supportive. I understand that a couple of times Hoffer may have been in the White House. And I think you should by all means tape Eric Hoffer.

F: I never have. I've contacted him once but we couldn't agree on when we were going to get together, and so I haven't gotten to him yet. But I agree with you, I should.

Was the commission rather harmonious, or were there divisions within it? I mean it's a long way, without getting into too much personality, between you and Roman Hruska.

H: On the surface all of the courtesies were extended to each other as a person; philosophically there were very, very deep differences, and if you would note there is a strong dissent in the Violence Commission. Are you familiar with that whole dissent?

F: Right.

H: Okay, I won't go into it then. If you read my dissent, I think it sort of points out some very, very basic philosophical differences between me and, incidentally, Leon Jaworski. In terms of your pulling out research I think the New York Times carried a cover story on the front page about this which, as I read it, was not too inaccurate about some of the differences. I guess you are familiar with this English poet who said, "I live in a sea of words where the nouns and the adjectives flow. Where the verbs speak of action which never takes place and the sentences come and go." The division in the commission was on what do you do in terms of action. It is easy to condemn violence.

A most valuable addition to the LBJ Library should be those transcripts of the hearing. I hope you have them, because they are classic moments in terms of a whole series of confrontations on it. When Milton Eisenhower had his heart attack after his brother died, I often presided. And the divisions philosophically between, say, Phil Hart and Hruska [were deep]. I left, in terms of all the political figures, that is members of the Congress, overwhelmingly impressed with Congressman McCulloch, the ranking Republican on the Judiciary Committee. [He was] an individual who cared deeply, who was trying with utmost conscientiousness for resolution of problems, who never at any time said anything or did anything for personal spite which would be counterproductive, and who remained aloof when irrelevant diatribes were being cast back and forth. I also left greatly impressed with Milton Eisenhower.

F: Yes. I saw him several times, and I was very taken with him. I thought they picked the

wrong Eisenhower for President.

- H: Oh, he would have been a great president. He was really very effective on getting the commission to face as many issues as possible and coming up with as much specificity as he did.
- F: Did Hruska take a line of, in effect, skewer the SOBs, you know, strong arm is the way to handle it. Or do you remember that that specifically?
- H: I think you have to take the issues: on gun control he was almost so hostile that it was not possible to have any effective discussion on the issue. I felt after struggling with the problem for a year and a half that his consciousness of the complexity of the problem of violence was raised.
- F: He was educable?
- H: He was moved up from where he was some steps, which might be still decades away from where I would have liked to have seen him.
- F: Right. You got through the open housing and other provision act there in 1968, you went down for the signing, didn't you?
- H: I believe I did.
- F: Was there anything particularly memorable about that?
- H: I guess by that time I had become a great admirer of President Johnson's style and his capacity to get things done. To be very honest with you, in 1960 it was inconceivable to me that I would have been a supporter of Lyndon Johnson. I was perhaps locked in with some of my old classmates at Yale and graduates of Yale who were fairly strong Kennedy supporters. Let me give you a couple of examples. I can recall, I think it was about two weeks before President Kennedy died, the King and Queen of Afghanistan were at the White House, and my wife and I were there. It was a very, very exhilarating, cultural evening. The line moved so smoothly and everything was just about on schedule.

Then a few months later, when we were at the White House with President Johnson, the first thing which was so noticeable was that the line where people shake [hands] with the President just seemed interminably long. When I got one step away from him there was a congressman whose name I don't now recall--it may have been McCulloch but I don't believe it was--and I recall President Johnson looking his wife right in the eye and saying, "Mrs. X, I want you to know how grateful we are and the country is for all that your husband is doing and all the abuse he is taking. He is the type of person who is going to help us turn things around." And she left absolutely radiant. When I would

watch his style and then watch results I became enamored and impressed and enthused, because there is no doubt in my mind that in terms of improving the quality of life for people he was much more effective than the Kennedys.

F: Theoretically he might have been a disappointment, but pragmatically you couldn't beat him.

H: I never felt that theoretically he was a disappointment on domestic issues. I have stated this before--Harry Middleton I think will tell you, because I didn't know he was there--that on domestic issues there is just no president from my view who has done as much in my lifetime to help the weak and the poor across the board. I just thought that he was a genius in his capacity to get things done and the nation was just grossly better off because of the input he had. I think that some of my old classmates from Yale who may have described the problem with a little more Ivy League eloquence would have stopped after their statement.

F: He came up here in the summer of 1967 to Philadelphia, to go back a minute, and I judge you had some kind of hand in the arrangements.

H: You know, I am just impressed about how much you know about me. Again, this is something which is supposed to be off the record. I had a classmate from Yale again, Sherwin Markman. Sherwin, I believe, was from Iowa. Sherwin probably never knew any black people intimately before he met me at law school.

F: Mainly a statistic in Iowa, and that's about it.

H: That's right. So we were in our law school reunion and Sherwin was asking me certain things. I said, "Look, Sherwin, you shouldn't talk to me." I said, "If you want to know something, I am not going to talk to you in terms of national problems. I know Philadelphia. I've been president of the NAACP here. I litigated. I represented the weak and the poor. And one of the issues is what should be done in the summer." And I said, "I'm not going to send you these memos." Because apparently they had people who were always loading them up with suggestions. I said, "If it's important enough what you think should be done in the summer, come up, be a guest in our house, and I will take you around."

So I took Sherwin. The first place I took him was a few blocks away from Temple University, which is in the midst of North Philadelphia. I just walked on the street and I said, "Look, tell these people we are newspaper reporters and we are making a survey of the house." We walked into a house which wreaked with urine. I told them I was with the Philadelphia newspaper the Philadelphia Tribune, which is a black paper, and they said, "Come on in and we will show you how bad the conditions are." We went down to the basement where they were using hoses to handle water and sewage. Sherwin was almost

ill, and I took him just in this. I said, "Now this is why people riot, because of what James Baldwin said: "There is no greater fear than a man who feels he's got nothing to lose." So I exposed him to that.

Then I took him to [church]. I said, "You've got to go to church." I took him to Leon Sullivan's church the next morning, a huge black church with about six hundred people very enthused and very supportive, which was sort of interesting to Sherwin. I showed him housing projects which Leon Sullivan had plopped in the middle of the ghetto on Gerard Avenue with not one window cracked, no graffiti, and still there isn't any. Then I took him to the Opportunity Industrialization Center and showed him what Leon Sullivan had done. I told him that all these people we knew at Yale, fine people in economics and these individuals whom we are talking about, were sending memos down giving broad Keynesian theory, and I showed him what happened with individuals who got no stipend, who were motivated, and with employment records. I think this was the first time he had had something occur.

F: He must have left here pop-eyed.

H: Yes, it was just really an extraordinary experience for him. Then I took him to a group I belonged to, a fraternity called the Bulay [?], where you had college presidents, college professors, high performers who are black.

F: What is that group?

H: It's called the Bulay [?]. It is called the Sigma Pi Phi. It is a small national group of which I happen to be national president this year. But it has practically all the black college presidents, Bob Weaver, Nabrit, a whole lot of people like that, Roy Wilkins, Whitney Young, Martin Luther King. It sends out no press releases.

Now, he was so impressed that he thought what you do was to have the President here. So then I was responsible for working it out and getting the President into North Philadelphia without any security problems, and without a substantial advance. Because at that time with the Vietnam War and some of the--well, there were just a couple of things. One of the huge centers--I insisted, "The President wants to see something. We have got to let him see what people have done with minimum cost." Now there is an old police station, Nineteenth and Oxford, which was run down when I was in practice in the district attorney's office, was really then inhabitable, which the mayor let Leon Sullivan have for a dollar, and they converted it. You have got to take him to a police station which was decrepit and which had been corrected and [let him see] what they were doing, and then you take him the other places. Everything was kept secret until maybe about two or three in the morning that the President was coming up, and when the mayor found out--

F: Is this Joe Barr?

H: Mayor Tate. Barr's in Pittsburgh; Tate's here.

F: That's right.

H: When he found out that the President was coming, at the last minute, because by that time, it was already after work, he sent these street crews out to clean up the streets. And people in the area thought there had been a riot. Some people here said, "My God, I saw all these trucks. The streets haven't been this clear since the last riot." You know, after they'd gone through. But I did have a little to do about it in terms of just wanting the President to be able to see some of the specifics of his program.

F: I gather he looked on it as rather a vivid visit?

H: Oh, yes, Oh, yes. I think he was absolutely elated, absolutely exhilarated, because he saw results. It wasn't phony, and it wasn't something on which an extraordinary amount of money had been spent.

F: Now, we got an extra court up here in Philadelphia. You got two of them, didn't you, or you had two vacancies. The question is whether you get appointed.

H: On the court of appeals?

F: Yes

H: Are you talking about 1967?

F: No, we are into the end of 1968, the beginning of 1969 now.

H: Yes.

F: I guess it's really the summer of 1968.

H: Yes.

F: Joe Barr has got his candidates out there in Pittsburgh, and I suppose Clark's got his.

H: Yes. This is something which really I did not push.

F: Maybe you're outside of the whole thing and don't know anything about it.

H: Apparently there was a tug of war, which I was not intimately familiar with, over the two vacancies on the court of appeals. I had heard around that time that the President was interested in appointing me to it. I sort of took the position that I wasn't going to go to

anyone; I wasn't going to ask a senator to do it. I enjoyed the district court. I don't know whether you're familiar with my background. I had gone on the court when I was thirty-five as the youngest judge appointed in the last thirty years. I enjoyed the work, and I think I was pretty well respected. If I went on the court of appeals, fine. If I didn't, I would not lose sleep.

What occurred, as I understand it, is that the key issue for the vacancy would be whether there were too many judges on our court of appeals who were from Philadelphia. Joe Barr and others from Pittsburgh felt strongly that there should be some Pittsburgh representative. As I understand it, Joe Clark was running for the Senate at that time again. Another issue was: what was his strength? Joe had not been an individual who had superb communication with his constituents. He spoke with eloquence in the Senate, he had a great issue in terms of what were the priorities of the world, and his home base was crumbling. I was told that Pittsburgh felt that they had been excluded, and I believe there was a tug of war as to whether it would be [David] Stahl or [Ruggero J.] Aldisert or me. I made it very clear that from my standpoint I thought Joe Clark would be foolish, for someone who then would have been around forty who was already a federal judge, to make this a cause celebre. Judge Aldisert, I've been told, was very, very strong on support in the Italian community, and if it was a choice of at least Joe, he had the black support, he was weak with the Italian support.

Then there was another apparently series of struggles in Pittsburgh with Stahl, who had been solicitor. Then there was the question, as I understand it, whether Judge [Harry E.] Kalodner who could have gone senior judge status years before would or would not go on that status. I was told that if Kalodner went on senior judge status there would be no doubt that I would get it, because then that would be a Philadelphia vacancy. I let it go. I don't believe I ever wrote a letter to anyone asking for it, because I just thought it would be greedy and inappropriate for me to be involved in that kind of battle.

F: And you were in a can't lose position, so there was no way you could be any worse off.

You have a little flirtation with the Virgin Islands? What's this?

H: I was sent down there on a couple of very, very serious cases.

F: Who sent you?

H: Judge [William Henry] Hastie, about the third or fourth year I was here. I don't recall what year. I guess I can't be precise; [it] probably was the winter of 1969 or sometime in 1968.

F: It was 1969, I think.

- H: The Virgin Islands is in our circuit. Do you recognize that? So what would take place would be that normally only the chief judge would go down to the Virgin Islands in February.
- F: Yes, I can understand that. (Laughter)
- H: The one person who would be the most junior, which would be me, would never go. Bill Hastie was chief judge then. He called me up to his chambers, without going too much into detail, and asked me if I would go down and try a case. I at that time was naive enough to think that it was a great tribute to the extraordinary impact which I had made in my few years as a judge, and I went down and tried a case involving someone by the name of Niles [?], which I think was the first major violent outbreak in the Virgin Islands.
- F: Where was this, in St. Thomas?
- H: St. Thomas. Niles one night had attempted to burn down the airport, the Hilton, the telephone company, and the home of a reporter.
- F: Had a busy night.
- H: This reporter was thought by most people to be a very racist individual who was always writing very, very disparaging comments about blacks. While in the process of attempting to burn this house down, Niles killed the person. Obviously, as I got deeper in the case I recognized that I had been sent down not merely because I was thought to be a good judge, but because the tensions were quite great. The best example of the tensions would be that when the pathologist was testifying on the stand showing a picture of a skull, that the bullet went this way with this trajectory, the defendant jumped up with his fist clenched saying, "I want justice! I didn't kill him with one bullet; I killed him with two." So that was my major experience in the Virgin Islands, trying this very, very difficult case.
- F: Did you have contact with the President after he went out of office?
- H: Not really. I wrote him some letters.
- F: You came down there for the dedication? Or you came down for the Civil Rights conference?
- H: Oh no, oh no. I didn't have personal, lengthy conversations with him. I wrote him letters. I went down when the whole Library was opened, which was sort of a very massive affair. You were probably there. I think you will recall. And again, I often think of Harry McPherson's comment about the President having a hundred individuals like a father. While I was there he said to some people, "This is one of my closest advisers, sound, reliable, responsible." I thanked him for it, but I had the impression that there were

probably a few hundred other people there Who got that accolade.

Then the next time I saw him was about two weeks before he died, when they opened the civil rights papers. I got a chance to sit down with him. What I recall was that Barbara Jordan was at the table. You should tape her. He was telling her what to do and how to help her, because I believe she had been elected but not yet taken office.

F: Right. I haven't seen her yet. I'll have to.

H: Oh, you really should, because I think that he was talking to her about which committees to get on, and he was telling an aide to call so and so to see what they could do to help her out. Because again, I think he recognized her potential, and he wanted to make sure that she got in on it.

F: Where does your circuit run?

H: Our circuit is New Jersey, Delaware, Pennsylvania and the Virgin Islands--the Third Circuit.

F: Why do you have that large skip to the Virgin Islands?

H: The same reason why you have Puerto Rico in the First Circuit, which is Massachusetts. When the Virgin Islands became a U.S. possession it was then 90 per cent non-white, about 90 per cent black, and the closest circuit to it would be the Fifth, which is Alabama, Mississippi, Louisiana, Georgia, Florida, Texas. With the degree of hostility between whites and blacks it was thought--so I understand, I have no documentation of it--that it would be better to have them in a different circuit. And I believe the same was true of Puerto Rico; the Fourth Circuit, which is Virginia, Maryland, North Carolina, and maybe also South Carolina, or the Fifth were geographically closer. That is why they have the jumps.

F: Can you think of anything else we ought to talk about?

H: No. You've refreshed my mind on things which I hadn't--

F: Got you thinking about the past? I certainly appreciate this, Judge Higginbotham.

H: I'm delighted, and I just can't say how impressed I've always been with President Johnson in terms of what he did for this country domestically.

F: I've heard him say some very nice things about you. I don't know that you were a father to him or he to you, but he certainly respected you.

H: It's just marvelous.

F: Thank you.

H: Delighted to have you.

[End of Tape 1 of 1 and Interview I]