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THURGOOD MARSHALL ORAL HISTORY, INTERVIEW I

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Gift of Personal Statement

By Thurgood Marshall

to the

Lyndon Baines Johnson Library

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Signed by Thurgood Marshall on August 19, 1970

Accepted by Harry J. Middleton for the Archivist of the United States on January 26, 1976.

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ACCESSION NUMBER 74-216

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THURGOOD MARSHALL

Biographical information: Asso. justice U.S. Supreme Ct; b. Balt., July 2, 1908; A.B., Lincoln U., 1930, LL.D., 1947; LL.B., Howard U., 1933; admitted to Md. bar, 1933; asst. spl. counsel N.A.A.C.P., 1936-38, spl. counsel, 1938-50, dir. counsel legal def. and ednl. fund, 1940-61; U.S. circuit judge for 2d Jud. Circuit, 1961-65; solicitor gen. U.S., 1965-67; justice U.S. Supreme Ct., 1967--. Civil rights cases argued include Tex. Primary Case, 1944, Restrictive Covenant Cases, 1948, U. Tex. and Okla. Cases, 1950, sch. segregation cases, 1952-53; Recipient Spingarn medal, 1946.

INTERVIEWEE: THURGOOD MARSHALL

INTERVIEWER: T. H. BAKER

July 10, 1969

B: This is the interview with Thurgood Marshall. Sir, to begin in the beginning, did you have any knowledge of Mr. Johnson back when he was a congressman or senator?

M: I knew of him when he was a congressman, and I knew of him directly through Aubrey Williams and people like that in the Youth Administration. The first I became interested was when he ran for the Senate.

B: Was this in the '48--?

M: Yes, in Texas. I was in Texas working on the primary cases, and all of our people of the NAACP in that area were enthusiastically behind him.

B: Excuse me, sir, this must have been in '41 then, when Mr. Johnson first ran for the Senate and didn't get elected.

M: It was '41 when he first ran. It was '41, because that's when the primary cases started. If I remember correctly, in the runoff the labor support dwindled away but the Negro support stuck with him. But when he became a senator, he was not among the liberals.

B: I was going to ask you about that. You said that the NAACP people in Texas were favorably inclined toward Mr. Johnson in those days?

M: Solidly. So was the national office.

B: Did they have any real basis for this?

M: Yes. Well, they knew him. The Negroes down there, they know each other pretty well. They were a pretty hard bunch. We followed their judgment. I didn't know him. But we couldn't engage in politics. All we could do was to talk about it. But Walter White, the head of the NAACP, did meet with him, as I remember, and did say that he was all right.

B: Did Mr. Johnson have any direct connection with what became the primary cases?

M: No, none at all. He had no connection with them one way or the other. I never saw him, so he could not have had any connection. I ran the case and I didn't--

B: You certainly would have seen him.

M: I would have known it, yes.

B: Then after 1948--after he became a senator--was there any change in this feeling?

M: Well, Walter White, who handled the legislative matters in Congress, got very angry with him and stayed angry until he died, as a matter of fact.

B: On what basis?

M: He just wouldn't support any of the legislation the NAACP was after. Walter White chalked it up to his great admiration for Sam Rayburn. He thought Sam Rayburn was calling the turn. Now whether that's true or not I don't know. But on our records he was not a liberal senator.

B: Incidentally, did Mr. Johnson have any connection with your other Texas case in the '50's?

M: None.

B: Sweatt versus Painter at the University--?

M: None. Not one way or the other. We never knew what happened.

B: How about, I guess what is the case, the school integration case--Brown versus the Board of Education?

M: Nothing. He had nothing to do with it at all.

B: This attitude you mentioned that Walter White had--did Mr. Johnson's activity in connection with the '57 civil rights bill change that any?

M: Walter was dead in '57; Walter died in '55.

B: That's right. Roy Wilkins--

M: Roy Wilkins took over then. No. Roy did not have the same opinion of him. Roy had a better opinion of him. He felt that he was the type of man in the Senate who could get things done, but he didn't. But he could have. He just chalked it up to politics. But he didn't have any--. As a matter of fact, Roy had very good thoughts about him. I know that as then and as of now.

B: What was the general opinion among civil rights leaders like yourself, of the '57 bill? Did you feel it was progress?

- M: Nothing. It wasn't doing any good. It was just barely progress because it had been a hundred years--eighty years--since we'd had one. The smallest slice was good rather than the whole loaf of bread. But it was understandable in my book because it was a strictly political move of getting something done. But when we'd been fighting since 1909 for something, it was good. Then when we looked at it, we had a different feeling.
- B: Mostly I guess because of the elimination of Part 3 divisions?
- M: Sure. Oh, yes, we fought to the bitter end on that. Yet as you look back, it was great progress, it seems to me, to get them to move at all. I don't know, and I guess nobody would know, just what was sold in there and how it was sold. Whether we could have gotten more or not I don't know. Nobody will know except--well, Lyndon Johnson would know and those people that were running that inner corps of the Senate in those days.
- You see, as I looked at him as a senator and leader, they always said he was a great compromiser, but I've always thought that he had the compromise in his pocket when the thing started each time. He just waited for the right time to take it out.
- B: You mean he had already figured out what was going to happen?
- M: Sure. He always won. Well, that all changed when he became President, anyhow.
- B: In those years before Mr. Johnson left the Senate, did you ever talk to him about this problem of compliance with the '54 decision?
- M: I never talked to him. I don't remember having ever talked to him until I came down as Solicitor General; I don't believe. I might have, but I don't remember.
- B: Incidentally, I would like to ask one question here that's not directly related to Mr. Johnson. What happened in '55 that caused the NAACP Legal Defense Fund and the NAACP to end their directorate connection--to split almost entirely?
- M: The United States Treasury Department, specifically the Internal Revenue Service--they decided that they were going to take away the exemption of the Legal Defense Fund.
- B: Because the directorate was--?
- M: No, no. They then got reasons afterwards. But as soon as the Eisenhower Administration took over, they came after us. I think they're still under investigation. We've been under investigation all the way up to the Kennedy Administration. We found out that if they took away our tax exemption, it would be two years before we could litigate it--complete the litigation. With a reserve fund of about twenty or thirty thousand dollars, we couldn't take that chance. So we ended up with three or four specific things. One was the Board

of Directors had to be entirely separate. The staff had to be entirely separate. The books were always separate. And the fourth one was we had to take NAACP out of the name.

Well, we agreed to the first two and we had already agreed to the third. We refused to take the name out; that's why we split. That's the only reason we split--to save it.

B: Was that a general tone of the Eisenhower Administration, or was there any one particular--?

M: Well, it just happened at that time. I don't blame anybody. It could be efficiency. Up until that time the charitable organizations group was run by very inefficient bureaucrats. The reason was it meant nothing to the government because if you knock out the exemption of one charity, the people will give it to another charity. The government doesn't make any money out of it. And the Eisenhower Administration, bent on efficiency, it could be that. But I do also know that Internal Revenue and the Secretary of Treasury got repeated letters from the southern Senators and Congressman, "How come they're tax exempt?" What did it I don't know. But I do know we were under--. I know of one time when they had two men in my office and two men in the NAACP office for six months, going through every single check, trying to find something. Well, they didn't find anything.

B: Actually the two have been practically separate for a good many years.

M: We only had the interlocking Board; that's all we had. We have separate buildings; separate bank accounts; separate books; and we were very careful about it.

B: To get back to Mr. Johnson, was there any dismay among civil rights leaders like yourself when he showed up on the '60 ticket for the Democratic party?

M: It wasn't dismay; it was great surprise! If I remember correctly, some of them were dismayed. I was not. I have a funny feeling of giving the people a chance. And I remember before Averell Harriman went to the convention, in his house he talked to me about Johnson being Vice President and was positive he was going to be, and asked me what was my impression.

B: This was before the convention?

M: Before the convention.

B: Harriman must have been one of the very few people who was seriously considering that.

M: Before the convention. I told him I thought there was no problem at all. I said, "Because

in my book Texas is not South; it's Southwest," and that his record wasn't that bad. But I do remember that other people in NAACP hit the ceiling.

B: Surely not Mr. Wilkins himself?

M: Yeah, oh he did hit the ceiling! He bounced off the ceiling.

B: But I believe he calmed down or endorsed--

M: Very shortly thereafter--it wasn't long.

B: Did anyone have to talk to him to--?

M: At that stage they were all talking to the Kennedys. I don't know how many times Roy must have been in there with the Kennedys. Once I talked to Bobby--that's all--just once. Roy ran the show, I mean. Being in Legal Defense I had to stay out of anything that looked like politics, so I did. But once I talked to--I had a very unsatisfactory conference with Bobby about the civil rights movement.

B: When was that?

M: Shortly after they took over--about the first of the year, I guess.

B: After President Kennedy was inaugurated?

M: Yes.

B: It was an unsatisfactory conference?

M: Yes.

B: In what way?

M: He spent all this time telling us what we should do.

B: What sort of suggestions did he have for you?

M: Well, that we ought to concentrate on this and concentrate on that and what have you. I told him that so far as I was concerned we had been in the civil rights business since 1909, and he'd been in the President business a year. Well, I mean, that's the way--. But Roy used to have many conferences with the President, very rewarding ones.

B: People have said that the intensity of the civil rights movement kind of caught the

Kennedy Administration by surprise when they came in.

M: [It] should have. I don't know. I did have a conference with the President about three months before he announced his candidacy, when he was a senator, about just what was cooking. I'm sure I didn't pull any punches with him. I don't remember. It was a lunch and we spent about two hours together. But he got the story. He knew what it was. But I don't think the President realized the urgency of it.

B: You're referring to President Kennedy now?

M: Yes. I don't think he realized.

B: Apparently, the activity in the South--Dr. King's activities and others--pushed the Kennedy Administration.

M: Somebody pushed them.

B: Then in that first year President Kennedy appointed you to the Circuit Judgeship.

M: Yes. That was when--'61. Congress held it up for a year--eleven months.

B: Did you have any doubts about leaving your work with the Legal and Defense Fund to--?

M: No. I thought it was time for younger people to take over, as a matter of fact. It was a good possibility I might have gone into private practice in about five years from then. I mean, I had to look forward to taking care of a family.

B: You mean after the circuit judgeship, retire and go into--?

M: No.

B: You mean you had been contemplating retirement?

M: Yes.

B: Incidentally, sir, at that time in '61, was there any serious debate about you being replaced by a white man?

M: No. It was strict seniority.

B: Mr. Greenberg was just next in line?

M: By, believe it or not, it was only a month or so over Connie Motley. I called Connie in

and told her that this was the score. She said, "Of course." If there was anything she was for, it was the seniority. She just didn't like that two months business because it was sort of a gamble one way or the other. Then I got them both together, and that's all there was to it. But I thought we'd reached the stage where it was unimportant. But this Black Power business and all now--

B: That's why I asked. Probably now it would be a real issue.

M: No, Connie Motley would be just as rough as anybody else--or rougher. She doesn't believe in that stuff.

B: Did you see anything of Mr. Johnson in those years while you were on the circuit court while he was Vice President--socially or otherwise?

M: No way, not until he called. That's the first time I knew about it.

B: That would be in '65 when he called you about the--

M: '61.

B: I'm talking about Mr. Johnson now.

M: That's right, '65.

B: When he called you about the Solicitor Generalship.

M: He called one day, around this time [July] I think, and I was up in the judges' dining room at the courthouse. My bailiff came up and tapped me on the shoulder. I said, "Fred, what in the world is wrong?" I mean, he's not supposed to bother us at lunch. He was as red as a beet. I said, "What's wrong, Fred?" He said, "The President wants to speak to you. He's on the phone!" I said, "The President of what?" "The President of the United States!" So he had held an elevator, and I went down. Sure enough he was on there. We chatted for about two or three minutes, and he said, "I want you to be my Solicitor General." I said, "Sir?" We chatted about it, and I said, "Well, Mr. President, I'll have to think this over." He said, "Well, go ahead, but don't tell a living soul." I said, "I assume that means nobody but my wife?" He said, "Yes, that's what I mean by nobody." He said, "Take all the time you want." I said, "Very well, sir." He hung up, and I hung up.

I went home and talked to my wife and we discussed the problems, because one was a lifetime job to trade in for a job at the beckoning of one person. Secondly, it was a \$4500 cut in salary. Third, the living expenses in Washington would be twice what I was paying in New York. So she said okay. We kept thinking about it, and the next day the phone rang. He was on the phone again. I said, "Well, Mr. President, you said I had all

the time I needed." He said, "You had it." I said, "Okay."

I went down the next morning, and I started telling him these things. He said, "You don't have to tell me. I can tell you everything including what you've got in your bank account. I'm still asking you to make the sacrifice." We talked for quite a while, and I said, "Okay with me."

B: Did he explain to you why he wanted you as opposed to just somebody else?

M: He said he wanted, number one, he wanted me in his Administration. Number two, he wanted me in that spot for two reasons. One, he thought I could handle it. Secondly, he wanted people--young people--of both races to come into the Supreme Court Room, as they all do by the hundreds and thousands, and somebody to say, "Who is that man up there with that swallow tail coat on arguing," and somebody to say, "He's the Solicitor General of the United States." Somebody will say, "But he's a Negro!" He wanted that image, number one.

Number two, he thought that he would like to have me as his representative before the Court. The other thing which goes through every conversation we had from then on--he would say at least three or four times, "You know this has nothing to do with any Supreme Court appointment. I want that distinctly understood. There's no quid pro here at all. You do your job. If you don't do it, you go out. If you do it, you stay here. And that's all there is to it."

B: He made it clear this did not mean that you would eventually get a Supreme Court appointment?

M: Over and over again. He made the announcement in the East Room, and it was very funny when I went in. The press knew nothing about any of this. When I went in he first said that I would come behind Mrs. Johnson, and then he said, "You come and go in right side-by-side with me at the door." We went in together. A murmur went around the press boys, and I found out afterwards that the question they were asking was, "Who has resigned from the Supreme Court?" He made the announcement and then we had the swearing in, and that was that.

B: During those conversations, did either of you discuss what would happen before Congress with your confirmation?

M: No, he said he could take care of that--that it would be hard, would be tough. He said, "If you can stand the gaff, I can." That time and every other time I've talked to him, the thing I was impressed with was what he intended to do with this country.

B: Could you elaborate on that, sir?

M: Well, he intended to wipe as much of it out as he could.

B: You mean white discrimination?

M: He intended to be to this century what Abraham Lincoln was to the last century, and he was going to do it. I frankly believe if he had had four more years, he just about would have done it. I mean, he rebelled at the discrimination against women--women judges. He always did. He said he wanted to leave the presidency in a position that there was no government job with a race tag on it--none! That's what he was driving at. He would constantly say, "If you've got any ideas, let me have them. If you don't want to bother with me, give them to Ramsey or Nick or somebody like that. But if there's any way we can break through, let me know."

B: Did you do that, sir?

M: Only once or twice. I couldn't give him any ideas. I mean, he had most of them himself. And then he was pushing them like mad.

B: While you were Solicitor General, did you, in addition to the work of the Solicitor Generalship itself, serve Mr. Johnson or the White House as an advisor on civil rights generally or appointments or things?

M: No, sir. Any ideas I'd have I would funnel them through the Attorney General which I thought was proper. It was particularly true, because I knew they got through. I mean, I know both Nick Katzenbach and Ramsey. I know if I made a suggestion they would pass it on.

He didn't welcome too much suggestion. If he wanted your advice, he would ask you for it. On some occasions he did, and I always gave it to him. I would go up there sometimes, especially on Saturday afternoon. It was the best time to get in that joint, and not be seen going in, because everybody was gone on Saturday afternoon.

B: What kind of things would he ask your advice on?

M: It was just problems about the Department, or my job, or the whole race problem, in general. But in absolute general terms, nothing specific. Then when I came on the Court, that was cut off completely. I didn't have to worry about it. He said the same thing, so that was cut off.

B: Within the Justice Department in those years, were there any serious debates over the speed of prosecution, particularly in the civil rights area?

M: Oh, yes, we didn't have to worry too much in the civil rights area because John Doar, who

was running it, he was about as dedicated as anybody in government. We would sit down. We had these Wednesday night meetings with all department heads, but we'd have earlier ones with John and people like that. The whole trouble in those days was it was just completely understaffed. He just didn't have the staff, and he would borrow sometimes one or two of my men to help him out. But I would say that the entire Department of Justice had been geared to it. They could get preference over any other Department. But it was tough.

B: Did you ever think in those days about moving efforts into the North as opposed to the southern small towns?

M: We've always been looking at the North. We were always looking at the North. But you couldn't get any complaints. Nobody would complain.

B: Surely the Urban League or the NAACP could have lent a hand there.

M: Only on labor cases. That's all they seemed to be interested in. They just didn't do it. I think that after--well, from after '55 on, I think we sort of laid down a little.

B: You mean after '65 on--after the passage of the voting laws? Or were you referring to the NAACP?

M: No, I'm talking about '65. I think we thought that was the sine qua non. That was it--we're here! You see, we tended to do that in '55. Then we got out of that with Martin Luther King, etc. Then '65, I think, it moved in again. You know, everybody fighting in the civil rights fight has always been a little inclined to just sit down and take a breather. We found out you can't take a breather. If you do, that other guy will run you ragged.

Let me tell you about my appointment to the Supreme Court. I was sitting in my office, and it was about, I guess, ten o'clock in the morning. Ramsey Clark called Mrs. Lavery, who is the same secretary I have with me now, and said, "Is the Judge in?" She said, "Yes." "Well, tell him I'm on my way." He was right there in that same hall on the fifth floor. He came on down and shut the door. He said, "What are you up to this morning?" I said, "Well, I've got to go up to the White House and talk to some students," one of these student groups, I've forgotten what it was, maybe with the Fellows, I don't know, "over in the Executive Building." He said, "What time are you due up there?" I said, "Eleven o'clock." He said, "You got a car?" I said, "Well, I know Mrs. Lavery well enough to be sure she's called for a car, and there'll be a car down there waiting for me." He said, "Well, instead of getting there at eleven, you get there at a quarter of eleven. Instead of going over across the street, you go in the main--. The boss wants to see you." I said, "About what?" He said, "I don't know." Ramsey, I mean, he won't tell you anything about anybody anyhow. I kept trying. He said, "I actually don't know." So I said, "Well, which way shall I go in?" There are three different ways you can go in

without being seen. And he told me which way to go, and I went up there and went in and waited a few minutes. Marvin Watson came out and said, "Come on." And I went in and we chatted--the President and I. He said, "You know something, Thurgood, I'm going to put you on the Supreme Court." I said, "Well, thank you, sir." We talked a little while. We went out to the press and he announced it. We came back in the room and I said, "Now, Mr. President, if it's all right with you I'd like to call my wife. It would be better than for her to hear it on the radio." He said, "You mean you haven't called Cissy yet?" I said, "No, how could I? I've been talking to you?" So we got her on the phone and I told her to sit down. She said, "Well, I'm standing." I said, "Well, sit down." She sat down and he said, "Cissy--Lyndon Johnson." She said, "Yes, Mr. President." "I've just put your husband on the Supreme Court." She said, "I'm sure glad I'm sitting down."

B: Didn't you have a little bit of a suspicion that it might be coming?

M: I had a hope. Any lawyer has a hope, but no suspicion. We had a party the night before for Tom Clark because he resigned that day. All of us were chatting around, and nobody suspected--and nobody said a word to me. A lot of people think it was discussed. I didn't know about it. I imagine it was. I know Clark must have known, and I know Ramsey knew. But they just don't pass out any information.

B: Did Mr. Johnson ever, then or later before you were actually on the bench, talk to you about what he thought a Supreme Court Justice ought to be?

M: Yes, his own man, and I told him that. He said, "Like what?" I said, "Just like the steel decision. When President Truman's, one of his very closest friends, Justice Tom C. Clark, not only voted against him but wrote the opinion against him." He said, "You mean you'd do that to me?" I said, "Exactly." He said, "Well, that's the kind I'm looking for." No, he dwelled on independence. The same way with Solicitor General. He said, "If you and Katzenbach can't make a decision, come up here and I'll make it for you. But you are your own boss." I said, "Well, the statute doesn't say that." He says, "I do." But he insisted on that. I found with him that, while I was Solicitor General, several times I didn't agree fully with the Attorney General. He had no trouble with me. I didn't win every time.

B: What sort of disagreements would you have?

M: About technical things.

B: Tactics in a case?

M: No, about whether we should take a case or not or what have you--certain things in there which I wouldn't discuss because that story won't be told, I'm sure, by anybody.

B: Well, that's the problem. If you don't tell it here, it won't be, except when you write your

memoirs.

M: I can guarantee you that the three people involved, not a one of them is going to tell it. I'll bet you money on it.

B: I guess we'll leave it at that. In that case, that's a story that's lost.

Did you also discuss with the President whether or not you would have trouble with Congress this time?

M: No, he said he would get it through. I remember the day that it cleared the Senate. I got a call in the afternoon shortly after it cleared, and he was upstairs in his living quarters. He said, "Well, you made it." I said, "Yes, sir. Thank you again," etc. etc. He said, "You know, you sure got me into a lot of trouble." I said, "Who got who into it? You did it, I didn't do it. I didn't do it." He just laughed! But I still don't see how he got it through, but he did.

You also realize that when he took me off the Court of Appeals he put Connie Motley on the district court. Everybody was saying, "The first Negro woman!" To me that wasn't important! She was the first woman on the Second Circuit District Court. She was the first woman, not the first Negro woman--the first woman! He had that in his mind for quite awhile.

B: And you did have a rough time before that committee.

M: Oh, that first one. Well, the second one, I knew what was coming because Senator [Strom] Thurmond had as his adviser a lawyer who is a law professor now down at Memphis Law School. He writes articles on the Fourteenth Amendment, and law schools won't publish them. When I saw him advising him, I said, "Well, I don't have too much to worry about." The questions he asked I expected. I wasn't going to answer them in the first place, because he wanted to know what was in the minds of the committee that drafted the Fourteenth Amendment. I don't know how you're going to find that out. I said I didn't know because I'm not a person that goes around lying. But you see I had already been through eleven months before, so I mean this few days--

B: You mentioned this earlier, but I think it would be appropriate to repeat it. After the accession to the bench here, no more contact with Mr. Johnson?

M: Except at dinners and receptions--that's all.

B: Did he ever try to seek your advice?

M: No. A couple of times I wanted to volunteer,- but I decided not--and I didn't.

B: In that regard, sir, did the disturbance over Mr. Justice Fortas--the two disturbances--hurt the Court very badly?

M: I think so. I think it hurt it to this extent. We felt it on the Court very badly because this--despite what anybody might say--is about as close a knit family as you can find. And both my wife and I--we really had it, just like it was a real blood brother.

I had been in New Orleans, and then I was up at the Seventh Circuit the next day when it broke. I was on my way. The press people were just unbelievable--I found out they had been working on my secretary and my wife, and they'll tell you nothing in plain English. The press people met me at the airport, every place I moved. Then when I finished the Judicial Conference, which is the circuit that I'm over, and I have to hold this conference once a year, and I agreed to stay over for a moot court at Northwestern. All three news agencies called Northwestern and asked how much I was being paid for a moot court. I never heard of anybody getting paid for a moot court--don't even get expenses. One guy was particularly obnoxious. He kept running around behind me in the lobby of the hotel out there, and eventually I said, "Well, look, I see I cannot get away from you. You're just too persistent, and I have to give in. I will answer your questions." He says, "Are you being paid for this moot court tomorrow?" I said, "Yes." "Who's paying it?" "Northwestern is paying it." "And how much are you being paid?" I said, "\$25,000." So he ran out with that information. The Chief Judge of the circuit Court out there said to me, "Why would you tell a barefaced lie circuit court out there said to me, like that?" I replied, "If he prints it, he's going to be fired sure as shooting--I mean if he hasn't got any better sense than to print that."

B: Was all this at the time of Mr. Fortas' nomination for Chief Justice or later on this year?

M: No.

B: This year at the time of the Life Magazine story.

M: This year. Anything hurts the Court. Everybody else can do whatever they want, but the Court--we can't. I mean, I can't even violate the speed laws. I can't even do anything.

B: Another thing. The court you joined I suppose will always be called "Warren Court." Was Chief Justice Warren really the leader of the Court, or does your group have a leader in that sense?

M: Yes, he was the leader. Well, he's just one of the greatest people who ever lived, and I think history will record when both of us are long since dead that he is probably the greatest Chief Justice who ever lived. He had the opportunity. He grasped it. He didn't duck it, and I think he did extremely well with it. But, in addition, he had a warmth like--. I'm right next to his chambers. When he would want anything, he would come in here. I

always--over and over again--I said, "Look, Chief, number one, you are the Chief Justice. Number two, I'm the low man on the totem pole. I just got here. Number three, I'm a tiny bit younger than you are. Why don't you have Mrs. McHugh call and I'll be in there by the time she hangs the phone up." Each time he very simply said, "I don't operate that way." Well, that kind of a feeling--but when we would go in the conference room on Fridays and vote on these cases, he only has one vote. He had the same vote the others had.

B: That's really the gravamen of the question I was asking. Does this kind of personality exert an influence over--?

M: When you get in that conference room, his power of persuasion is great. There is a little something that goes along with the Chief Justice. But he has got to back his up with cases, just like each one of us has to. If I, as the junior Justice, get more cases on my side and argue them, he's in trouble. It's he who has got there with the mostest is the man who wins the argument.

B: So, in addition to his warm personality, Chief Justice Warren must have a pretty strong intellectual force behind him, too.

M: And he digs. He takes that briefcase. You should see that briefcase he takes home at night! I don't see how he goes to all these affairs. He must stay up all night--is the only way I can figure it out. But I think the Chief Justice does have an effect on the Court. That goes all the way back to Marshall. Back in those days the Chief Justice just ran the joint. But I think in the present time, you go down the line from Hughes, Stone, etc.--they left their print on their Court. I think all of them did. But he's a great man.

The new Chief Justice I think is going to be just as great. There are a lot of things they have in common. They're very interesting. We've been watching them.

B: Oh really?

M: Yes. You know, [they] let you go, you know. Listen.

B: I imagine you've been kind of watching the new Chief Justice like school boys with a new headmaster.

M: Yes, it won't help you.

B: I know you've got another appointment coming up here. Is there anything else you would like to add?

M: No. I just think Lyndon Johnson, insofar as minorities, civil rights, people in general, the inherent dignity of the individual human being--I don't believe there has ever been a

President to equal Lyndon Johnson--bar none!

B: That's high praise indeed, sir. Do you see any faults--?

M: Well, Lincoln, for example--Lincoln had a lot of politics involved with what he was doing.

B: There are those who would say, "So does Lyndon Johnson!"

M: I don't think so. That's the difference when you talk to him man-to-man. He's talking from his heart. When he does things, it doesn't seem so, but when you actually talk to him, the basic instincts that come out, I mean, he has no reason to persuade me about it--no. I've got one solid vote. That's all I've got. I don't even control my wife's vote. A guy tends to let it out. He was just frustrated at times. But, of course, he had to use his political acumen to get these things through Congress. There is no other way to do it. I don't know how he got my nomination through. I don't know until this day. It took some doing, I'm sure.

B: It must have.

M: I'm sure it took some doing.

B: All that's high praise, sir. Do you see any faults--any bad side to the man?

M: I don't. I don't even think he was intemperate. I don't think he shot from the hip ever. I don't think he did. I think he gave the impression of shooting from the hip after planning six months where to shoot.

B: These frustrations you mention, would these be frustrations over the progress of civil rights and anti-discrimination?

M: Yes.

B: Is there anything else you would like to add?

M: No, that's about it.

B: Thank you very much, sir.