

Notes 53N, Copy 2

Justice Felix Frankfurter

Supreme Court Building

Washington, D.C.

February 20, 1958

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Interview with Justice Felix Frankfurter at his office in the Supreme Court Building, Feb 20, 1958, by Forrest C. Pogue.

(The Justice chatters along and digresses a good bit. Continually deprecated his knowledge--a little too much for credibility. Lively--frequently got up to imitate someone. Did Negro, deep South, Churchillian, Stimsonian imitations. Jumped up often to take down a book to read a quotation. Read one from a letter of Oliver Wendell Holmes; an inscription in a constitutional law book; a book of English quotations; when I asked about a quotation of Lord Acton's he got in two law clerks and had them running down material. I expected an European intellectual. Instead he sounds New Englandish. Full of terms like "young whippersnapper" and "I am free, and one used to say, white, and twenty-one." His memory is a bit clouded, as he admits, but he tries to work out the logical sequence of his ideas and is careful with the documentation. He is not always correct in his recollections, however. He is a bit waspish and managed to take cracks at quite a few people).

He began by saying, I am afraid I have brought you here under a misapprehension. I am afraid I have little to tell. I said No, I was aware that you had a pleasant relationship with the Marshalls. I need more on his human side. Many people think he is cold. He said that isn't true. Said they had this pleasant little joke about Mrs. Marshall's spelling which arose once, perhaps a dinner I gave for Quezon (I had met him years before), at which Mrs. Marshall's spelling came into play and I said I would be her attorney. After that he always alluded to his "golden speller" and once sent me a memorandum she had written as evidence.

You missed one of the best people on Marshall by not knowing Hopkins. Hopkins and Marshall worked closely together. I remember Hopkins telling me once they were in London to see Churchill. You know Churchill liked to keep people up all night. Marshall wasn't like that. Hopkins said you must help me with this India business. Marshall said: oh, no, that's your job. I am responsible only for the military things.

Do you know the whole story about the Marshall appointment? I have the feeling that the key man was Pa Watson. (You should go see Mrs. Watson, She is at Charlottesville. She has his papers. You may use my name). I think Pa played for time. The whole hierarchy was lining up for that blowhard, what's his name. I said Drum. Yes. (You know Stimson offered him the China job before that Vinegar fellow and he thought it wasn't important enough; Stimson took the hide off). Well everybody was lining up for Drum. This was something the Pope would be interested in. Watson worked for time. It would be like Pa to say (here he imitated a slow, Southern voice): "Well let's just postpone this a day or two." Pa knew the quality of Marshall. Gave Roosevelt a chance to know Marshall.

Here he interjected--I don't want to foul my own nest. After all I was a professor a longtime and I wrote on government, but most books on government, are unreal. They leave out things like Pa playing for time.

(See Jimmy Byrnes). Jimmy told me--he was a great admirer of the General's--that he had seen him before one of the committees Byrnes was on- appropriations or military service--whatever it was he was on Jimmy would be the leader. He had the gift of getting things done--the same

quality Lyndon Johnson has, but Byrnes had it more. Marshall made a great impression on him. Byrnes was a discerning man. Of course, now he is an embittered man. That is beside the point. He knew that Marshall was the best brain among the generals. Byrnes spoke of a meeting at the white House in the Oval Room. The grim Chief of Staff was there (Craig was a humorless man) and Marshall was assistant chief of staff. A matter came up on which Byrnes knew Marshall was in disagreement with the President. Marshall could have kept quiet. But he spoke up sharply. Byrnes was upset. President might well say I don't want an adviser around like that. He thought Marshall had killed his chances. Byrnes later said it showed FDR would brook opposition at times. Typical of Marshall he would speak out despite the effect on his chances.

To have had a man of Marshall's discernment, clear-cuttedness and forthrightness was so important that if one feels that way, he might well think of it as the direct intervention of God. I can't think that way because I don't dare speak of knowing God's intentions.

Another great thing was the relationship of Marshall and Dill. It was a wonderful thing--the understanding and trust which existed between them. I was struck by the fact that General Marshall left the sickbed to read the lesson at Dill's funeral in the cathedral. (Apparently Mrs. Marshall was the one who was sick). It was a moving thing. I wrote the letter which Mrs. Marshall reprints in her book.

Another wonderful thing was the relationship between Stimson and Marshall. Two men of great character, Think of what it would have been if LaGuardia or someone else had been there. Stimson was perfect for the job. The two men were much alike.

I remember an experience with Gen Marshall. Really has more to do with Eisenhower. I think of it occasionally when I read that Eisenhower never reads anything and has no ideas. I think Eisenhower is a fine human being who was not intended to be President. I see him once a year when the Court calls on him, and I always think it is a pity for him. Fine person. Republicans told him he didn't have to campaign.

In the fall of 1941 or perhaps 1942. When was the Italian campaign? Anyway, I had on hand a dinner for Chief Justice Stone. We have never been great entertainers. Of course, Mrs. Frankfurter is an invalid now. But we never went in for these big Washington affairs. Even if I had had the money, I wouldn't want to do it. So I thought what is the best thing I can do for the Stones. I decided that it was to invite two guests--the Marshalls.

Marshall is known as a silent man and he is a good listener. But he was also a good talker. (Mrs. Frankfurter sat by him at the Acheson dinner for Nehru. Said he talked to her all evening and was a wonderful talker.) Stone was a vain man. A man of good qualities, but vain. He liked to talk on everybody's subject. When the Italian campaign came up, he asked Marshall if he knew anything about the Italian terrain. Marshall began talking and kept the conversation the rest of the evening.

In the course of the evening, I asked him how he picked Eisenhower. After all he had been a colonel when the war started and here he was in charge of the campaign. (I wish I had a recording, but what I tell you is substantially what he said. I have always put to myself the

difference between natural and social sciences. You can't experiment on men like guinea pigs to see what they will do.) He said when Eisenhower was in planning, he came to my attention. I liked the way he handled matters. I decided to test him. I sent him to England nominally on some special project. Actually, I wrote friends there to tell me what they thought of him. Later I sent him again and asked again for a check on him. I thought this is as near a laboratory check on a man as you can get. [This does not square with the facts exactly and the Justice was worried about it. He said who would Marshall have checked with; was Dill in England? I said No. Dill came here in Dec-Jan 41-42. Eisenhower was over there in spring of 1942. Went twice; is supposed to have written his own directive for job of commander. I doubt really if Gen M had any Britisher to check on him. I pointed out that Gen Marshall tested Frank Andrews much more. That the laboratory method was used by him. Not sure that it was done here]. Of course at the end there is the human judgment. Of the non-demonstrable decisions of life, those which rest on judgment are what matter to me. There is no right or wrong answer a priori. Judgment is prophecy. What matters is the intellectual procedure. How do you go about making the best guess? This was a striking example of a man making a best guess and saying this is my man. It's like the book; thou hast been faithful over some things, I will make thee master over many. That isn't exact.

I said I had been told that Stimson was put in so he could get us into war with Japan. He said I know a good bit about Stimson. He started me out as a youngster in his office in New York. Then I came down to work for Newton Baker awhile. Hoover came on the scene with food administration. Brandeis opened doors for Hoover. Hoover wanted a general counsel. Brandeis sent him to ask me. I said I didn't know whether he would take it, but Stimson was a good man. Stimson had been trying to prepare this country for going into war. He felt it was his war. He roared at me (He could really roar at times--here Frankfurter fairly blasted me off my chair) and said How dare you recommend me for a civilian job. Get that damn little boss of yours (Baker) to recommend me for something in the Army.

I went to see Roosevelt one day. He said he liked to talk with me because I didn't want anything for myself. I remember coming to the 1936 inauguration and I got soaked to the skin. Afterwards his Kentucky secretary (I said McIntyre and he said yes) took me into the White House to give me a drink. He couldn't find anything in the usual place. He called the usher—McDuffie?)--and McDuffie said "I knows where the likker is" and started for the President's room. I said you can't go in there for a drink for me. He said oh yes. I hear 'em talking around here and I know what the President says about you. He says I like him because he don't ask for anything.

Roosevelt said what do you think of LaGuardia or Lehman for Secretary of War? I said LaGuardia has many good qualities but you will have a war abroad and one at home if he is there. (Do you know what Stimson told him when he wanted to be a B G in Civil Affairs. He said LaGuardia do you want to be mayor of New York or Mayor of Rome. That got him). As for Lehman, I said you know he is indecisive. (Lehman was a good senator; he was where he could tell other people how to do things and not have to do anything himself.) I said have you thought of Harry Stimson. He didn't say anything particular, but I could see the idea had hit home. Marshall didn't have anything to do with it. Roosevelt hadn't thought at all about Stimson and Manchurian affair.

I said what about Beard's suggestions? Frankfurter said I liked Beard and I kept on holding on to him despite his attitudes. As he went along he began to pick up every distortion he could find in the Senate testimony and put it in his book. Everything was used to prove the point. It's just like that Tansill man. It reminds me of something Oliver Wendell Holmes once wrote--here he showed me a letter in which Holmes had said when one's interest is keenly excited, things gather around that magnetic point. Mentioned seeing some initials and numbers on a fence once--probably the name of a medicinal formula--but said if properly worked on could have been used to prove that it foretold the end of the world.

I spoke of how the fact that Stimson said we must maneuver them so they will fire the first shot. He said instead of this meaning we will try to force them into war, it was intended for the opposite reason.

He said the illuminating thing of Pearl Harbor (I wouldn't worry too much with the wild statements if I were you) to me was what Stimson said to Roosevelt when he heard the news of the attack. I saw Stimson that same day or the next day. I remember I had been working on a case we had been hearing--it was a piddling case on what happened to clubs which charged green fees--imagine fooling with such things when civilization was at stake--such are the quixotisms of life. Stimson said the President telephoned him at Woodley and said Harry come straight over. The Japanese have attacked. Stimson said was it Malaya or Siam (I don't mean Siam, where was it?). The President said Hell No, it is Pearl Harbor. Now probably all of them are in error for not foreseeing that, but the main thing is that there was no conspiracy, since they didn't even envisage the possibility of an attack at Pearl Harbor.

I remember the Court went over to hear Roosevelt give the war message and I walked with Justice Reed. He said in ten minutes we will be at war with Japan and Germany. I said not with Germany. This man will not go to war. Germany has to declare war. He will then say a state of war exists.

When I think of the Stimson appointment, I reflect on the fact that the fate of a nation depends on the accident of an incident. He was a tremendous person. I remember at Dill's funeral. Lady Dill was good enough to invite me (it was by invitation you know). As we started down I was in line with Mr. Stimson. He felt I was walking in a position which was subordinate to him. He said you take your proper place. I demurred (after all I had worked under him as a youngster. But he was conscious of the Court's position). So he said You little cuss take your proper place. That was typical. He could call the Justice a little cuss, but the Court's position must be respected.

I said why didn't Roosevelt pick a replacement for Woodring sooner? He said I asked Roosevelt that and he said every time I try to fire him, he says my wife is Expecting a baby and I want it to be able to say that I was born when my Daddy was Secretary of War. Said he used that story twice. And then he laughed in his gay way, which people thought irresponsible.

He spoke of Feis talking to him about Stimson. Praised Feis' work. Asked me about Ehrman. What do you think of Alanbrooke's book? Said (This is Frankfurter) I haven't agreed with those who say he denigrated Marshall. Bryant may have. But Alanbrooke caught the big quality of Marshall's character. His indifference to self. His lack of ego, except as ego is essential to

personality. His subordination of personal interest to the best interest of the nation, that was before he was, and would be. On the matter of strategy, I can't judge. Perhaps Marshall wasn't the greatest strategist. On this Alanbrooke has the right to an opinion. I may make a mistake—I say that Justice Bradley was superior to Justice Harlan, but on such a matter I have the right to an opinion. On matters pertaining to strategy, Alanbrooke has such a right.

If you want an idea of Marshall's character and human-ness, look for it in his relations with Mrs. Marshall. He is gallant and tender and solicitous.

Marshall had the discipline of a soldier and the very great virtues of a soldier. Duty to him was no copybook sermon, but a way of life. The soldier has a sense of duty. (When people have told me that the present President will resign, I said no. He may die there, but he is a soldier. He was chosen for this job and he will keep it and do his best. This duty of the soldier is incarnate in Marshall. Duty took care of all situations. He wouldn't avoid any duty. I said he once spoke of not pressing the minor points to a point of no compromise. He said, of course, he has a strong sense of relevance. Marshall was devoid of self-interest. He was austere, but he did not have the austerities of Adm King. I said to Mr. Stimson once, What kind of man is Admiral King? He roared: "You don't think he would let me in his map room, do you? It doesn't matter what I think of King, he fights."

Marshall had elements of granite, but he was not austere. He was not a "good fellow" either. Neither was Stimson. Neither could have been a U. S. senator, at least not for long. But a Marshall had loyalty, tenderness, devotion. I remember Acheson telling me of Marshall at a meeting with the staff when he went to the State Dept: Don't be sentimental with me; I reserve my sentiments for Mrs. Marshall.

Marshall is compared to Washington. I recall only one epigram from each of them. Washington has the one about raising a standard, Marshall said "Don't fight the problem; solve it." Don't you know of another.

Says Truman is a man who is--** inaccurate. In many things, he doesn't take the pains you or I would take to make sure they are right, But he has the story right about the China Mission and Marshall's appointment after that wild man, Hurley, resigned. Marshall wanted time to prepare Mrs. Marshall.

We talked of Eisenhower. He said E. was an innocent in political matters. I mentioned his statement on Tidelands oil and he shrugged. He said and someone gave him that line on TVA. He said but is it true that he was handed his plans from above and left the fighting to his subordinates. I said Marshall did not try to dictate strategy, gave E considerable leeway.

We talked of Truman again and Eisenhower running for presidency. He said he was sure (and I agreed) that "Truman had more or less made clear to Eisenhower at Potsdam that he would help him run. (I said I felt that Eisenhower had it right on this). Said he had heard Truman tell something more or less like the Eisenhower account--not a firm offer. Said the damn Democrats (I call them damn Democrats one day and speak of damn Republicans the next) were willing to run him, just like the Republicans were.

I spoke of Eisenhower and Darlan case. He said yes it raised big rumpus--stirred up in part by Morgenthau.

We talked of Stimson again. Said Stimson had told of how Churchill had spoken of Passchendaele and the Channel filled with bodies. Stimson said is that any way for a war leader to talk. He didn't say anything, but next day said: how is my friendly enemy?

We talked next of books on the war. I mentioned Higgins' book and the statement about a historian must be a hanging judge. He couldn't believe Acton said it. He said I will give you my idea of a judge, was given me by my professor-- Wambaugh, a Walloon. It runs:

"Let not the judgment that is just
 Be judged too soon.
"But be reserved, if judge one must
 Til noon.
"Or yet til evening, that the way
 Repentant may lie open
All the day."

He said the hanging judge reminded him of a remark he made to the Lord Chief Justice of England, Goddard, when he met him at Williamsburg. Spoke of representative of Oxford coming out and bringing greetings in Latin. Walked and spoke with dignity. Then came Goddard, rather rolling along, like I remember seeing Lord Beatty do when he walked along the Quai d'Orsay at the Peace Conference, not the Quai d'Orsay, but that street the Crillon was on (I said Rue de Rivoli) Yes, [The Justice here got up and rolled along like a sailor on the bridge] I said to someone: he isn't drunk and they said how can you tell. Well, he came out after all that Latin, and began by saying: "I regret Ladies and Gentlemen that I am forced to speak to you in English." They roared. Later, I said I hear you are a hanging judge and he denied it. He said I apply the law. (As Acton uses it, hanging judge connotes a lack of justice.)

(By this time it was six and had taken two hours. I bade him goodbye and he said to come back again.)